

CLA1501: Commercial Law

Chapter 1: The South African Legal System

Source when lawyer consult on Roman Dutch Law

- Corpus Iuris Civilis

Constitution Supremacy

- **Constitution is the Supreme Law of the Republic**
- The Constitution is the highest law of the Country and any law which is contrary to its provisions may be declared invalid

Courts

- **The Constitutional Court**
 - Hears matters regarding the interpretation of the Constitution
 - Superior Court
- Supreme Court of **Appeal**
 - The Supreme Court of Appeal is only a court of appeal for High Courts
 - Superior Court
- **High Court**
 - **Divorce**
 - Mental Capacity
 - Sequestration of estate
 - Liquidation of Company
 - **Will**
 - Superior Court
- **Magistrates' courts**
 - Have very limited jurisdiction
 - **Lower Court**

Registrar: Responsible: Issue Process Enrolment of cases maintenance of records and issuing of orders

Mr Senekal wants to sue Mrs Senekal for divorce. Which court should he approach?

- the High Court

Stare Decisis:

- The Decision Stands Judge make decision and parties must adhere

Ratio Decidendi:

- Reason for the decision
- Every decision is not imposing rule of law

Obiter Dictum:

- Incidental Remark – Additional Remarks
- **Can be persuasive for other Courts**

Which **ONE** of the following statements regarding the application of the doctrine of stare decisis is **INCORRECT**?

- 1 A High Court is bound by its own decisions until they are overruled by a superior court.
- 2 A High Court is bound by the decision of a court of concurrent status within its own area of jurisdiction
- 3 A High Court can, depending on how it is constituted, be bound by a decision of the Supreme Court of Appeal
- 4 A High Court is not bound to follow the decision of a High Court belonging to a different area of jurisdiction (2)

Correct Answer: 1

Which court(s) has/have jurisdiction to decide whether one of the fundamental rights entrenched in the Constitution was violated in a particular case?

- 1 only the Constitutional Court
- 2 only a High Court
- 3 both the Constitutional Court and the Supreme Court of Appeal
- 4 both the Constitutional Court and a High Court
- 5 the Constitutional Court, the Supreme Court of Appeal, and a High Court (2)

Correct Answer: 4

Chapter 2: Introduction to the science of Law

Right: Any right which a legal subject has regarding a specific legal object and which is protected by law

Legal Subjects

- Natural persons
 - Human Being
- Juristic Persons
 - Other than Humans (company university municipality)

Right of Legal Object (legally claim to right)

- Real Right
 - Ownership
 - Servitudes
 - Property Rights
 - Mortgage and Pledge
 - Right of Security – fail to settle debt then mortgagee can sell property
- **Intellectual Property Right**
 - Artist, writer inventor
 - **Right to a Patent**
- Personality Rights
 - Physical integrity or reputation of person
- **Personal Rights**
 - Rights in terms of conduct, performance (doing or giving something)
 - **One Person Owe another money**

Private Law

- Law of Persons
 - Who are legal subjects
 - Becomes or ceases to be legal subject
 - Classes of legal subjects
 - status
- Family Law
 - Marriage: Husband and wife
 - Parents & Children
 - Excluding cousins in-laws
- Law of personality
 - Physical being and dignity
 - Criminal Law
 - Civil Law
- Patrimonial Law
 - Money
 - Sum of assets and Liabilities
 - Law of Property
 - **Definition:** Granting and recognition of rights over property
 - The right of Ownership:
 - Power over Property
 - May not use a he like: dependant on public law

- Ownership: Person who has the right of ownership over property is not necessarily the possessor. (abdul possessor loads car to bill the ownership)
- Possession direct or indirect control over property
- Acquisition of Ownership
 - **Occupation**
 - **Seizure of property that belongs to no one**
 - **Catching Wild Bird**
 - **Original method of acquiring ownership**
 - Prescription
 - Take ownership after 30 years if he were the owner
 - Movable Property
 - Delivery of property (cars moved from one place to another)
 - Immovable Property
 - Property only after delivery, registration at Deeds office
- Servitudes
 - **Definition:** Limited Real right over the property
 - **Praedial:** Have the right to drive or walk over the plot of another
 - **Personal Servitudes: Usufruct: Wife may live on property if he dies and children receive ownership**
- **Mortgage and Pledge**
 - Limited real rights over property
- Law of Succession
 - Will of deceased estate – consist of assets and liabilities
- Law of Intellectual Property
 - Inventions, art, books
- Law of Obligations
 - Contract
 - **Delict – Causes damage**
 - Unjustified Enrichment

Susan buys Heloise's house and pays the full purchase price. Susan acquires ownership of the house on ...

1 conclusion of the contract of sale.

2 payment of the full purchase price.

3 registration of the transfer at a deeds office.

4 occupation of the house

Chapter 3: Law of Contract: Introduction

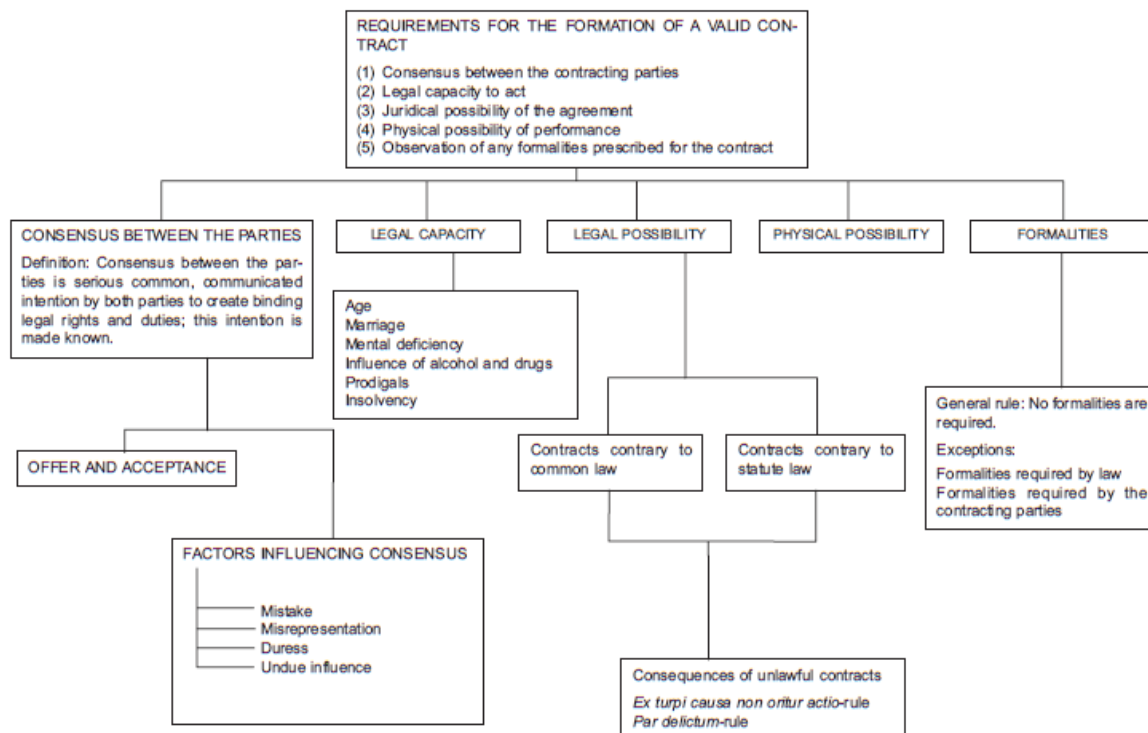
Contract: Agreement concluded by two or more persons with the serious intention of creating legally enforceable obligations

Requirements for the formation of a valid contract

- Consensus between parties
- Legal capacity to act
- Juridical possibility of the agreement
- Physical possibility of performance
- Observation of any formalities prescribed for the contract

Valid contract only if all these requirements have been satisfied – there may still be an agreement if some of these conditions exist but will NOT constitute a contract

Scheme 1: Requirements for the formation of a valid contract



In which **ONE** of the following situations was a **VALID** contract concluded?

- **3 Peter purchases a new pair of running shoes for R600 on the official website of Nike. The shoes will be delivered at his flat in Pretoria.**
- All five requirements for a valid contract have been satisfied. Online contracting is possible. The Electronic Communications and Transactions Act 25 of 2002 regulate electronic contracts.

Freedom to Contract

- **Cornerstone of modern law**
- Generally free to choose with whom and on what grounds one wants to contract
- **Freedom to contract can be limited in certain circumstances. A person may, for example, not conclude contracts, which are unlawful or illegal.**

Which **ONE** of the following statements is **INCORRECT**?

- 1 Freedom to contract is considered to be one of the cornerstones of the modern law of contract.
- 2 One is generally free to choose with whom and on what grounds one wants to contract with another.
- 3 Freedom to contract may not be limited.**
- 4 A person may not conclude contracts which are unlawful or illegal.

Chapter 4: Consensus

Consensus is basis for every contract

A contract cannot be valid in the absence of consensus

Consensus can only be reached if:

- **Be contractually Bound**
- **Common Intention**
- **Make the intention Known**

Offer and Acceptance

- Declaration made by person (offerer)
- Acceptance by offerree

Requirements for offer:

- Offeror will be legally bound by the mere acceptance
- Offer must be complete
- Clear and certain
- Accepted verbally or written
- Addressed to specific person
- The offer and acceptance must be communicated

Mr and Mrs Party invite 250 guests to the wedding reception of their daughter. They agree with Good Food Caterers that the cost of the reception will be calculated at R100 per guest. For that reason Mr and Mrs Party state expressly on the wedding invitation that no children are invited to the reception. No less than 20 children attend the reception. Good Food Caterers charges Mr and Mrs Party extra for the 20 additional guests.

Which **ONE** of the following statements is **CORRECT**?

1 Mr and Mrs Party may not claim the additional costs from the uninvited children, because, as minors, they are not liable for performance in terms of the contract, unless their parents or guardians ratify the contract.

2 Mr and Mrs Party may claim the additional costs from the parents or guardians of the children, because by bringing extra children to the reception contrary to the express statement in the offer (invitation) that children were not invited, they committed breach of contract.

3 Mr and Mrs Party may refuse to pay Good Food Caterers the additional amount for the uninvited children, since they made a mistake as to the number of guests who would attend the reception, and so did not agree to the additional expenses.

4 Mr and Mrs Party may not claim the additional costs from the parents or guardians of the (uninvited) children, since the invitation constitutes only a social arrangement and not a contract, and failure to abide by its conditions does not amount to breach of contract.

Social appointments, of which an invitation to a wedding reception is an example, have no legal consequences. Since the parties in this set of facts do not have the intention to create legally enforceable obligations, their agreement is not a contract

Which **ONE** of the following constitutes a **valid offer**?

1 David advertises his car for sale in the local newspaper.

2 Peter verbally offers to buy a farm belonging to Johnny for R500 000.

3 Sandy says she will pay a reward of R100 to anyone who finds her lost dog.

4 Dolly makes Johnny a written offer to buy his farm, but her letter is lost in the post.

One of the requirements **for offer and acceptance** is that the offer may be addressed to a particular person or persons, or in general to an unknown person or persons. This is an example of an offer addressed to unknown persons

The following are examples that are not offers:

- Invitation to make a offer
- Statements of intent
- Calling for Tenders
- Auctions

Absence of consensus

- Relate to fact, legal rule or principle
- Material fact, legal rule or principle
- Fact of law

Dispatch theory

- **Contract comes into being at the place and time when the letter of acceptance is posted**

Undue influence: Under duress

Chapter 5: Capacity to Perform Juristic Acts

Age

- Become major when the child reached 18
- Minor 7-17
- Cannot do anything under 7
- Minor needs help from parent or guardian to contract
- **Over 17 have limited capacity to act** He or she may, however, conclude contracts without assistance which are exclusively to his or her benefit.

Which **ONE** of the following statements is **CORRECT**?

- 1 An insolvent has limited capacity to act.
- 2 A person with prodigal tendencies has limited capacity to act.
- 3 A minor over the age of seven years has limited capacity to act.**
- 4 A minor under the age of seven years has limited capacity to act.

Barney, a sixteen year old boy, inherited horses worth R90 000 from his late grandfather. Barney lives in a flat with his parents. He would therefore prefer to sell the horses and invest the money. Which **ONE** of the following statements is **CORRECT**?

- 1 Barney needs his parents' assistance to sell the horses because he is a minor.**
- 2 Barney does not need his parents' assistance to sell the horses because he inherited the horses.
- 3 Barney does not need his parents' assistance to sell the horses because he reached majority at the age of fourteen.
- 4 Barney needs his parents' assistance to sell the horses because the value of the horses is more than R50 000.

Marriage

- In community of property
 - Separate Assets and liabilities are consolidated
 - Joint estate profits and losses
 - Written consent required if investment or immovable property
 - Can go into contract without consent
 - Joint estate go into contract
 - **If asset bequeathed in terms of a will to a spouse with the express condition that it is to be excluded from the joint estate then it is excluded**
 - **Each spouse has full capacity to act with regard to the joint estate**
- Out of community of property
 - Separate Estates
 - Each act on own estate
 - Only liable for debt for own estate
 - Both liable for debts necessities for households

Mental Deficiency

- Contractually incapable
- If conclude a contract then contract is void without consequence
- Contract can be concluded during moment of normality

Drunk or under drugs: Cannot conclude contract

Prodigal: unable to control spending unable to contract

Insolvency: if sequestrated – not impacted can contract as long as it does not impact estate

Ben is a general dealer he needs to appoint a sales person and to replace his delivery van with a bigger vehicle. If he finds a buyer for the van and a suitable sales person he will conclude two contracts: a contract of sale in respect of the old vehicle and a contract of employment with the suitable applicant

Which one of the following persons does NOT have full capacity to conclude both contracts with Ben

1. *Emma, twenty years old, who has been married to Dan for the last two years. They are married out of community of property*
2. **Noel whose estate was sequestrated after he lost a fortune in a shady business deal. Noel has not been rehabilitated as yet**
3. *Ace who is married in community of property to Jane*
4. *Andrew, 19 years old, whose parents left him behind when they immigrated to America because he had his own job and flat*

If sequestrated – not impacted can contract as long as it does not impact estate

Alice is a seventeen year old and lives with her parents. She concludes a written contract in terms of which she buys a flat from Ben, a 35 year old man for R80 000. She intends to use the money she received as a gift from her uncle to pay the purchase price

Which of the following statements is correct?

1. The contract between Ben and Alice is void, because it was concluded without the consent of her guardians
2. *The contract between Ben and Alice is void, because it was concluded without the consent of the High Court*
3. **The contract between Ben and Alice is not enforceable against Alice, because it was concluded without the consent of a guardian**
4. The contract between Ben and Alice is void, because Alice does not have the capacity to act

Chapter 6: The agreement must be possible

Must be possible two elements

- Legal possibility
- Physical Possibility

Contracts contrary to common law

- Contracts which cannot be legally executed (legally)
- **Agreement that are contrary to good morals (running a brothel)**
- **Agreement that are contrary to public policy (harmful to public)**
 - Administration of justice
 - Crimes and delicts
 - Safety of state
 - **Restraining freedom to participate in legal transactions**
 - **Freedom to participate in trade (restraint of trade) Allowed to give restraint of trade – Valid and Enforceable**
 - Gambling Contracts

Which **ONE** of the following contracts is **NOT** legally impossible in terms of the common law?

- 1 Anna lends money to Barry, in order for him to divorce his wife, so that he can marry her.
- 2 Betty is angry because someone parked in her parking bay. She pays the car guard R10 to damage the wipers of the car.
- 3 Sam and Birgit are engaged. They include a clause in their ante nuptial contract to the effect that Sam makes Birgit his heir.**
- 4 Jeff and Joe decide to run a brothel and draw up an agreement on how they will divide the profits.

Contracts could be contrary to public policy because they restrict people's freedom to participate in legal or commercial intercourse. However, as an exception, the law does allow engaged couples to include a clause in their ante nuptial contract to the effect that the one spouse makes the other his or her heir. This exception enables the first-dying spouse to provide for the maintenance of the surviving spouse

Ted and Robyn are engaged. They included in their antenuptial contract a clause to the effect that Ted makes Robyn his heir

Which **ONE** of the following statements regarding the agreement between Ted and Robyn is **CORRECT**?

- 1 It is a valid contract
- 2 It is an unenforceable agreement since it is prohibited by legislation
- 3 This agreement constitutes a contract that is physically impossible
- 4 It is an agreement in terms of which Ted's freedom to participate in legal intercourse is restrained

Correct Answer 1

Gretchen works at the local Traffic Department. Gretchen sells drivers' licences to the public illegally. Nick pays the agreed purchase price of R500 in cash to Gretchen. Subsequently Gretchen refuses to deliver a driver's licence to Nick. Which ONE of the following statements is CORRECT?

- 1 Nick can claim delivery of the driver's licence from Gretchen on the basis of the contract which arose between them.
- 2 Nick can reclaim the purchase price from Gretchen on the ground of unjustified enrichment.
- 3 The contract between Gretchen and Nick is void due to legal impossibility.**
- 4 Options (2) and (3) above are both correct.

The contract between Gretchen and Nick is unlawful and therefore void owing to legal impossibility.

Possibility and Certainty of Performance

- **Facultative Obligation:** The undertaking by the debtor to deliver a specific mountain bike is a determined performance. As the debtor (Sifiso) may, at his sole discretion, choose to deliver a different mountain bike, the obligation is also facultative.
- **Generic obligation,** the debtor (unless otherwise agreed) may choose performance from a specific genus (for example, to deliver any one of his ten mountain bikes).
- **Alternative obligation,** performance may be selected from two or more specified alternatives. The two or more objects from which performance must be chosen are determined at the time of the conclusion of the contract
- **Performance is determinable,** there is consensus and it is physically possible to perform. If all the requirements for a valid contract are met, the contract is valid

Sifiso undertakes to deliver his Peugeot mountain bike to Motha. The contract further provides that Sifiso may, at his sole discretion, deliver another mountain bike of similar quality.

This is a/an ...

- 1 generic obligation.
- 2 facultative obligation.**
- 3 alternative obligation.
- 4 invalid contract.

Chapter 7: Formalities

Formalities:

Relating to the outward, visible form in which the agreement must be cast to create a valid contract.

General Rule: No formalities required

Compliance with formalities is a requirement for the validity of only those contracts where formalities are required by legislation or the contracting parties

Which ONE of the options provided below will complete the following sentence CORRECTLY?

Compliance with formalities is a requirement for the validity of ...

- 1 all contracts.
- 2 all written contracts.
- 3 only those contracts where legislation prescribes formalities.
- 4 only those contracts where formalities are required by legislation or the contracting parties.**

Contracts where formalities are required:

- By Law
 - Alienation of Land
 - Contracts of surety-ship
 - Donation of performance due in future
 - Consumer contracts
 - **Unless registered the ante nuptial contract no force against 3rd party (between spouses)**
- Required by Parties
- Writing and signing of electronic transactions
 - Attach signature - legal (signature, name etc)
 - By Law only advanced electronic signature
 - **An electronic signature can legally fulfil the same function**

Peter entered into several contracts without complying with the prescribed statutory formalities. He has not performed in terms of any of these contracts.

Which **ONE** of the following contracts into which Peter entered will be partially valid if statutory formalities are **NOT** complied with?

- 1 a contract for the alienation of land
- 2 a contract of suretyship
- 3 an antenuptial contract**
- 4 none of the above, because they will all be completely void

An ante nuptial contract must be notarially attested to and then registered in a Deeds Office within the prescribed period. However, if an ante nuptial agreement has not been registered, the agreement is valid between the spouses, but not against third parties.

Chapter 8: Terms of the Contract

Term

Provision which imposes on a contracting party one or more contractual obligations to act in a specific manner or to refrain from performing specific act

Different Types of incorporating terms into a contract

- Express
 - Articulated declarations of interest
- Tactical terms
 - Not expressed in words but based on parties true intention
- **Implied Terms**
 - **Implied warranty on goods**

Essentialia

- Terms which are essential for the classification of a contract
- Identify the particulars of the contract (identification)

Naturalisa

- Rights and duties of contracting parties
- Effects and consequences of contracts

Incidentalia

- Special requirements
- Allowance for additional time for paying money
- **Added terms which are included in a contract in order to provide for special requirements of the parties**

Condition

- **Suspensive Condition**
 - **Suspend the operation of the contractual obligations in terms of the contract until the condition have been fulfilled (until you get the loan, if not then the contract is void)**
- Resolutive Condition
 - Future condition where after the contract is concluded

Stanley makes a written offer to buy Fanie's house on condition that Stanley obtains a loan from Regular Bank for the amount of R500 000 within three weeks.

Fanie accepts the offer by Stanley.

Which ONE of the following statements is CORRECT?

1 No binding contractual relationship has come into being between the parties.

2 If Stanley does not obtain the loan within three weeks, the contractual obligations are terminated.

3 The contractual obligations come into operation on acceptance of the offer by Fanie.

4 Fanie can withdraw from the contract if, after a week, it appears that Stanley's chances of obtaining the loan are remote.

If the uncertain future event (ie the obtaining of the loan) does in fact take place, the condition will be fulfilled. If this specified uncertain future event does not take place, as is

the position here, the condition is not fulfilled, and the contractual obligations do not become operative, but are terminated

Time Clause

- Suspensive Time Clause
 - Suspended until certain period of time elapsed
- Resolutive Time Clause
 - Expiry date of contract

Supposition

- Renders the existence of the contract valid on an event which have taken place in the past
- Will only buy plot if it has a sea view – the colour must be black

Clarence wants to purchase a stand from June only if the beach is visible from the stand June is not sure whether the beach is visible from the stand They agree that Clarence will purchase the stand if the beach is visible from the stand

What is such a contractual term called?

- 1 a warranty
- 2 a condition
- 3 a modus
- 4 a supposition

(2)

Correct Answer: 4

Warranty

- Accepts absolute responsibility for proper performance relating to the absence of defects in the product or service

The Modus

- Burdens the contracting party's right to the performance made to him on her terms of the contract.
- Modus is a contractual term, which burdens a contracting party to do something or to refrain from doing something. Jolwana is obliged to grow mealies on the farm.
- He will be in breach of contract if he does not do so.

Which **ONE** of the following statements is an example of a modus?

1 Zinzi leases her flat to Lerato. The agreement provides that their contract of lease will be dissolved if Lerato buys her own flat.

2 Thabo and his pregnant wife Caroline, agree that Thabo will buy Caroline a car if their child is a boy.

3 Molefe donates his farm to his son Jolwana subject to the term that Jolwana will grow mealies on that farm.

4 George wants to purchase a watch from Nicholas. Nicholas is not sure if the watch is gold-plated or solid gold. George agrees to buy the watch provided it is solid gold.

Cancellation Clause

- Cancel the contract if other party breaches the contract

Penalty Clause

- Breach of Contract and claim damages

Priscilla and Daphne enter into an agreement. In terms of this agreement, Priscilla undertakes to design and plant a new garden for Daphne by no later than 31 October 2009. A penalty clause is added to the contract in terms of which Priscilla must pay Daphne an amount of R100 for each day that the garden make-over exceeds the agreed date of completion. Priscilla is twenty days late and only completes Daphne's garden on 20 November 2009.

Which **ONE** of the following statements is **CORRECT**?

- 1 Daphne can claim R2 000 from Priscilla in terms of the penalty clause as well as damages in the amount of R500 since she was unable to use the garden for a garden party on 10 November, because the garden had not been completed.
- 2 The penalty clause is invalid in terms of the Conventional Penalties Act 15 of 1962, because it can cause serious injustice as the penalty is recoverable merely on the ground of Priscilla's breach of contract and as the extent of the penalty is predetermined.
- 3 Since the garden was not ready for use before 20 November 2009, Daphne has a choice of enforcing the penalty clause or of claiming damages in the amount of R2 500 that she suffered by having had to rent another venue for the garden party she had scheduled for 10 November, because Priscilla did not finish the garden on time.
- 4 If Daphne can prove that Priscilla breached the contract by not completing the gardening operations by 31 October 2009, she can hold Priscilla liable for payment of the penalty of R2 000 (2)

Correct Answer: 1

Forfeiture Clause

- Special conditions to cancel or rescind contract and entitle to restitution

Rouwgeld Clause

- Amount to be paid to dissolve contract
- Forfeit deposit

Entrenchment Clause

- **May only be altered by written amendment**

Floors and Maans agree that Floors will buy Maans's car for R55 000. They further agree that Floors will pay a deposit of R20 000 and will pay the balance of the amount in seven instalments of R5 000 each over the next seven months. They fail to make any provision for the possibility that the car might contain a latent defect.

Which **ONE** of the following statements will complete the sentence below **CORRECTLY**?

The term dealing with the deposit and instalments is an example of

- 1 an *essentiale* of the contract
- 2 an *incidentale* of the contract
- 3 a *naturale* of the contract
- 4 an implied term of the contract (2)

Correct Answer: 4

Chapter 9: Interpretation of the Contract

Guidelines for interpreting a contract

- Ordinary grammatical meaning
- Words that carry a technical meaning will be interpreted in accordance with their specific use.
- Context of words are used
- Ambiguity Interprets against the author
- Presumptions - Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect.

Which **ONE** of the following is **NOT** a guideline for the interpretation of contracts?

- 1 Words that carry a technical meaning will be interpreted in accordance with their specific use.
- 2 Normally all words will have their ordinary grammatical meaning
- 3 If ambiguity exists, the contract will usually be regarded as invalid
- 4 Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect (2)

Correct Answer: 3 Ambiguity Interprets against the author

Which **ONE** of the following is **NOT** a guideline for the interpretation of contracts?

- 1 Words that carry a technical meaning will be interpreted in accordance with their specific use.
- 2 Normally all words will have their ordinary grammatical meaning.
- 3 If ambiguity exists, the contract will usually be regarded as invalid.**
- 4 Where the parties express themselves on a particular matter but omit some detail, common-law rules will regulate that aspect.

Parole evidence or integration rule

- Based on oral – written down
- Written document is the only written document
- Not be allowed to submit changes or changes based on agreement before
- **The parole evidence prevents a person from relying on the oral agreement and he is obliged to repay the loan**

Neil and Kate decide to start a retail business together. They have already discussed and reached agreement on the duties of each of them and the division of the profits. They decide that Kate will write down everything on which they reached agreement and provide each of them with a copy of the contract. However, just as Kate starts writing, Neil changes his mind about the contract and informs Kate that he no longer wants to be involved in the business.

Which **ONE** of the following statements regarding the validity of the agreement between Neil and Kate is **CORRECT**?

- 1 A valid contract has come into existence and Neil is bound to it.
- 2 A valid contract has not yet come into existence and Neil is still entitled to withdraw
- 3 A valid contract has not yet come into existence, but nevertheless Neil cannot withdraw at this stage
- 4 A valid contract will not have been concluded if the intention of the parties was that they would only be bound by the written document, and not merely the oral agreement (2)

Correct Answer: 4

Thabo and Tshepo conclude a written contract of loan. When they initially discussed the contract, the idea was that the loan would be repayable only after three years. However, the written document expressly provides for immediate repayment of the loan if Thabo requests it. Assuming that Thabo will not invoke this term, Tshepo signs the contract. Two months later, Thabo calls up the loan with immediate effect.

Which **ONE** of the following statements reflects the **CORRECT** legal position?

- 1 Tshepo is entitled to apply for the rectification of the written contract
- 2 Thabo has committed breach of contract by calling up the loan and Tshepo can claim damages
- 3 Tshepo can rely on the oral agreement between herself and Thabo and can refuse to repay the loan immediately
- 4 The parole evidence rule prevents Tshepo from relying on the oral agreement and she is obliged to repay the loan immediately (2)

Correct Answer: 1 Rectification of the written document does not accurately reflect the oral agreement

Chapter 10: Breach of Contract

Five Different Forms of Breach of Contract

- **Default by Debtor**
 - Mora Debtoris
 - Only Late with Performance – and must still be able to perform on a later stage
 - Does not perform to agreed time and delay is due to debtors fault
 - **Performance must be delayed**
 - Must be due to debtors fault
 - Specify specific date or time
- Default by Creditor
 - Creditor causes the debtors performance to be delayed
 - Discharge of debtors obligation
- **Positive Malperformance**
 - Rendering defective performance – inferior quality
 - **Debtor commits an act which is contrary to the terms of the contract**
- Repudiation
 - Party indicating that he will not honour the obligations of the contract
- Prevention of Performance
 - Caterer does not arrive for wedding due to writing down wrong date – wedding is over and cannot cater for it later

Ted and Marshall enter into a contract in terms of which Marshall has to deliver a dozen bottles of export wine to Ted. Ted has already paid the purchase price. Marshall now indicates that he does not intend to perform in terms of the contract. Which ONE of the following types of breach of contract has Marshall committed?

- 1 repudiation
- 2 mora debitoris
- 3 positive malperformance
- 4 prevention of performance

Which ONE of the following statements is **CORRECT**?

A debtor commits breach of contract in the form of default (*mora debitoris*) if he or she ..

- 1 has tendered defective or improper performance.
- 2 has rendered performance impossible.
- 3 has delayed performance.
- 4 has indicated that performance will not take place as agreed

(2)

Correct Answer:3

The Maroon Baboon is a television character that is extremely popular with young children Janet, who owns a toy shop, orders fifty Maroon Baboon outfits from Fantasy Clothing at R50 per suit. The parties agree that the suits will be delivered on 15 November. Janet plans to sell the suits at R120 per suit. At least one hundred customers express interest in buying suits for their children as Christmas gifts, but Janet cannot supply them as the suits are only delivered on 15 January. The reason for the late delivery is that Fantasy Clothing took on more orders than they could cope with By this time Edmund the Weasel has replaced the Maroon Baboon as television's favourite children's character and the market for Maroon Baboon suits has diminished considerably

Which ONE of the following statements is **CORRECT**?

- 1 Fantasy Clothing committed breach of contract in the form of *mora debitoris* and Janet has a choice between cancelling the contract or enforcing it.
- 2 Fantasy Clothing committed breach of contract in the form of *mora creditoris* and Janet can cancel the contract because timely performance was of the essence in this contract
- 3 Fantasy Clothing is in *mora ex persona* by not performing by 15 November
- 4 If Janet enforces the contract she may claim damages from Fantasy Clothing in the amount of her negative interest. (2)

Correct Answer: 4

Chapter 11: Remedies for Breach of Contract

The innocent party can exercise the right of cancellation at any time after his or her having become aware of the other parties breach of contract

Remedies

- Execution of contract
 - Orders for specific performance
 - Orders for reduced performance
 - Prohibitory interdicts – prohibit restraint of trade
- Cancellation of Contract
 - Cancellation and default by Debtor
 - Specific date for performance and tacit term that timely performance is essential
 - Notice of intention to cancel
 - Cancellation clause
 - Cancellation and default by Creditor
 - Specific date for performance and tacit term that timely performance is essential
 - Notice of intention to cancel
 - Cancellation clause
 - Cancellation and defective performance (Positive Malperformance)
 - Material Breach of Contract
 - Cancellation Clause
 - Cancellation and Repudiation of the Contract
 - Material repudiation
 - Cancellation Clause
 - Cancellation and prevention of performance
 - Debtor performed and claim cancellation

Which **ONE** of the following is an instance under which a contract can be cancelled for breach of contract in the form of mora debitoris?

1 if the contract contains a cancellation clause

2 failure to send a notice of intention to cancel the contract

3 failure to perform by the stipulated date where the time of performance is not of the essence

4 timely but defective performance

If a contract contains a cancellation clause, the creditor will indeed be able to cancel the contract in the event of the debtor's default, even if the default is not a material breach of contract

Damages

- Suffered loss as a result of breach of contract
- Innocent party is entitled to damages
- Can claim only in respect of expenses already incurred

Patrimony Loss

- Pain and suffering cannot be claimed

- The amount by which the value of his or her patrimony would have increased through proper performance, or the amount by which his or her patrimony has decreased because of proper performance did not take place

Chapter 12: Transfer and Termination of Personal Rights

Codent: Person that transfers the right

Cessionary: person to whom it is transferred

Cession: Does not terminate obligation, or create new ones, only new creditor

Discharge: performance of the obligation undertaken is fulfilled

Recession and Cancellation: Recession withdrawing the contract other than breach

Agreement: Agree to end the relationship

- Release
 - Creditor releases Debtor from Obligations
- **Novation**
 - **Existing agreement extinguished and new agreement drawn up**
- Delegation
 - New party introduced
 - New agreement drawn up
- **Settlement**
 - **Settlement of dispute and debt**

Merger: Person both the Debtor and Creditor – contract written off

Set-Off: extinguishing of debts owed reciprocally by two parties

Prescription: Acquire Rights and be release from obligations

- **Settlement of a Bill – 6 Years**

Which **ONE** of the following statements completes the following sentence **CORRECTLY?**

When a creditor is a minor ...

- 1 prescription will not start running.
- 2 the completion of prescription is delayed.**
- 3 prescription is interrupted.
- 4 prescription will run against his or her legal guardian.

Where prescription runs against a minor, the completion of prescription is delayed under certain circumstances. If the prescription period will be completed before the minor reaches majority, the completion of prescription will be delayed until one year after the minor has reached majority. If the prescription starts during minority but will only be completed after the minor has reached majority, prescription will only be delayed if completion will occur within one year of the minor reaching majority. If completion will only occur more than one year after the minor has reached majority, it will not be delayed. The completion of prescription is delayed until the minor becomes a major whereupon it continues to run again

An obligation can be terminated by ...

- 1 prevention of performance.
- 2 supervening impossibility of performance.**
- 3 supervening impossibility of performance where the debtor is in mora.
- 4 initial impossibility of performance.

Supervening impossibility of performance occurs when performance is possible at the time of the conclusion of the contract, but factors beyond the control of the contracting parties intervene and result in objective impossibility of performance. A contract does come into being, but is terminated when supervening impossibility of performance occurs

Which **ONE** of the following statements regarding novation is **CORRECT**?

- 1 Novation does not extinguish the original obligation between the parties
- 2 If the novation is void for whatever reason the old obligation is also void.
- 3 A valid novation will take place even though the initial obligation was invalid.
- 4 The effect of novation is to extinguish the original debt and therefore to extinguish accessory obligations. (2)

Correct Answer: 4

The period of prescription in respect of a debt arising from a bill of exchange or other negotiable instrument, is usually .

- 1 three years.
- 2 four years
- 3 five years
- 4 six years (2)

Correct Answer: 4

Which **ONE** of the following statements is **CORRECT**?

- 1 If Baxter borrows R4 000 from Edgar on 1 December and they agree that Baxter will pay the money back on 30 December, prescription regarding the debt begins to run on 1 December
- 2 Baxter may cede a third of what Enos owes him to Barney without Enos's consent.
- 3 Baxter owes Power Bank a total of R200 000 in respect of various transactions. He deposits an amount of R50 000 with the bank, but fails to stipulate how the payment must be allocated. The bank is obliged to apply the whole sum towards the reduction of Baxter's obligations in respect of the capital on his home loan
- 4 Baxter (Pty) Ltd's debt of R40 000 in favour of the Big Construction Co (Pty) Ltd is extinguished when the two companies merge (2)

Correct Answer: 4

Merger: Person both the Debtor and Creditor – contract written off