

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

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### Instructions:

- Please answer the following questions by means of any of the following methods:
  - Fill in your answers on this document (electronically) and save in Word/PDF;
  - Fill in your answers on a separate piece of paper (by hand) and scan it in/take a photo.
- Please submit it through attaching your attempt to the link on the BER 210 ClickUp page, under the content area “Tutorial Submission Links”, through clicking/tapping on the link “TUTORIAL 1: SUBMISSION LINK”.
- Then attach your attempt by clicking/tapping on “Browse Local Files”:

#### ASSIGNMENT SUBMISSION

Text Submission

Write Submission

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- When finished click on “Submit”:

When finished, make sure to click **Submit**.

Optionally, click **Save as Draft** to save changes and continue working later, or click **Cancel** to quit without saving changes. You are previewing the assignment - your submission will not be saved.

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**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

**Questions:**

**Question 1**

Xavier bought a Massey Ferguson diesel engine for R55 000 from Zuko to pump water at his farm from a nearby dam. The contract, which was concluded on 20 January 2020, stated that Xavier must pay the full purchase price to Zuko in cash on 1 March 2020 and Zuko must deliver the engine to Xavier on 2 March 2020.

In light of the scenario above, which type of breach/breaches occurred in the following cases:

- a. Xavier paid the purchase price on 3 March 2020 by cheque.
- b. Zuko delivered a John Deere engine to Xavier on 5 March 2020.
- c. B was willing to pay R65 000 for the same engine therefore, Zuko sent a message to Xavier which read “I do not want to sell the engine to you anymore and I hereby cancel this agreement.

**(21 marks)**

- a) Delay by debtor (mora debitoris)- a debtor is in mora if he/she does not perform timeously as stated in the contract. Requirements: Performance still possible- yes, Xavier still paid the price, just at a later time than stipulated in the contract. Debtor fails to perform timeously. There was a specified date that Xavier had to pay by, he did not pay before this time. Performance due and enforceable, the creditor has the right to claim immediate performance from Xavier. Fault is not a requirement; Xavier still had the duty to perform timeously according to the contract.
- b) Delay by debtor (mora creditoris)- a debtor is in mora if he/she does not perform timeously as stated in the contract. In this case, Zuko is the debtor, and delivers the machine later than the stipulated date in the contract. He also delivers a different type of machine than the one stated in the contract. This results in positive malperformance, as the contract stated he had to perform an act stipulated by the contract, that is deliver one type of machine, he however delivered a different type of machine.
- c) Repudiation, in this case, a contract had been entered between Zuko and Xavier, so both of them has the right to perform their duties as stipulated by the contract. However, when B offers more money than Xavier, Zuko says he is no longer willing to sell the machine to him, even though they had already entered a contract. He expressly

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

and without lawful justification stated his unequivocal intention to no longer perform his obligations as bound by the contract.

**Answer:**

Click or tap here to enter text.

**Question 2:**

Catherine and Dianne agree that Dianne will sell certain unpolished diamonds for R4mil to Catherine.

2.1 Alex breeds with race horses. He purchases a black Arabian Stallion from a local breeder for a market related price. The local breeder delivered a brown Arabian Stallion to Alex's farm. The form of breach of contract committed by local breeder is:

- a) Positive Malperformance
- b) *Mora creditoris*
- c) *Mora debitoris*
- d) Repudiation
- e) Rendering performance impossible

**(1 mark)**

**Answer:**

a

2.2 Where a contracting party is guilty of *mora creditoris*, the contract may be cancelled immediately if time is of the essence and the breach is not corrected within a reasonable time.

- a. True

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

b. False

**(1 mark)**

**Answer:**

b

2.3 Byron is the owner of a brick manufacturing company. He concluded a contract with Tom to manufacture and deliver 10 000 bricks or 10 pallets of bricks (one pallet contains 1 000 brick units) to Tom at his farm on Monday 19 March 2020 at 12:00. Byron only delivered the bricks to Tom on Tuesday 20 March at 16:00. Choose the most correct statement:

- a. Tom committed breach of contract in the form of repudiation.
- b. Byron committed breach of contract in the form of repudiation.
- c. Tom committed breach in the form of *mora creditoris*.
- d. Byron committed breach in the form of *mora debitoris*.
- e. Bryon committed breach in the form of malperformance.
- f. Byron committed breach in the form of rendering performance impossible.

**(1 mark)**

**Answer:**

d

**Question 3:**

Vusi is the owner of a hardware and building material company. He concluded a contract with Terry to manufacture and deliver 10 000 bricks or 10 pallets of bricks (one pallet contains 1 000 brick units) at Terry's farm on Monday 19 March 2018 at 12:00. Indicate which type of breach of contract, if any, occurred in the following circumstances. Motivate your answer.

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

- a) Vusi arrived at Terry's farm on time to deliver the bricks but there was no one to receive the bricks at the agreed time.
- b) Vusi only delivered 8 000 bricks (8 pallets) to Terry.
- c) Before close of business on 18 March 2018, the workers stacked the delivery truck with the 10 pallets (10 000 units) of bricks to deliver to Terry the morning of the 19<sup>th</sup> of March 2018 as per agreement. However, on the evening of the 18<sup>th</sup> of March 2018, the truck, with the 10 brick pallets, are stolen from Vusi's property as he forgot to lock the loading warehouse garage.

**(18 marks)**

**Answer:**

- a) Yes- mora creditoris: according to the contract, Vusi and Terry would meet at the agreed time. Terry is the creditor and Vusi is the debtor, since Terry had not made the appropriate arrangements to perform his duties as a creditor, it results in mora creditoris.
- b) Yes – positive malperformance: Positive malperformance occurs where a party subject to a contractual relationship performs, but such performance is defective or incomplete. This may be due to a number of reasons such as complete performance being impossible due to natural disasters or a change in the law. In this case, Vusi was supposed to deliver 10 brick pallets as stipulated in the agreed contract. He however, only delivered 8 brick pallets.
- c) Performance rendered impossible: Impossibility of performance is a doctrine whereby one party can be released from a contract due to unforeseen circumstances that render performance. In this case, due to negligence, Vusi had left his truck unlocked, leading to the unforeseen event of the 10 brick pallets being stolen, therefore it is impossible to perform his duty as the debtor in the contract.

**Question 4:**

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

Jason is a 16-year old high school learner (grade 10). He bought a motorbike online from Draya without the consent of his parent/guardian for R45 000 and transferred the full amount immediately.

4.1. It later turned out that the motorbike is only worth R10 000. Is Jason bound to the contract and does he have any remedies? Give reasons for your answer.

4.2. Would it have made a difference to your answer in 2.1 above if the motorbike was worth R55 000? Is there any way that Jason/s parent/guardian can assist his to continue with the contract?

4.3. Would it have made a difference to your answer in 2.1 above if Jason at all times pretended to be a major (have full contractual capacity? Give reasons for your answer.

**(7 marks)**

**Answer:**

- a) Since Jason is a minor, he is not bound to the contract. He can claim his money back and return the bike due to him acting without the consent of someone with legal capacity to enter a contract.
- b) Yes, if the bike was worth R55000, Jason would have no reason to return it as he paid less than what it is worth
- c) No, even if Jason had pretended to have full contractual capacity, it would render the contract null and void, so future claims and obligations are invalid, the contract itself would be invalid.

**Question 5:**

Identify the type of impossibility that occurred in the following scenarios and indicate the impact of such impossibility will have on the validity of a contract.

1. A and C concluded a contract in terms of which A will sell cattle to C. However, the cattle were stolen the night before the delivery was supposed to take place.
2. Sia sells Bow a car that belongs to Arrow.
3. Betty bought jewellery from an overseas supplier. The jewellery was being transported by ship in a shipping container since it was delivered together with

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

other goods. Unfortunately, the shipping container fell overboard. The jewellery is valued at R75 000 while the cost to retrieve the shipping container was valued at R100 000.

4. Portia entered into a credit agreement with a supplier of furniture. Due to being retrenched, she is unable to continue payment of her monthly instalments.

**(8 marks)**

**Answer:**

- 1) Negligence- Contract is still valid, creditor may choose to cancel contract or uphold contract
- 2) Intent- contract is invalid
- 3) Negligence- Contract is still valid, creditor may choose to cancel contract or uphold contract
- 4) Negligence - Contract is still valid, debtor may choose to cancel contract or uphold contract

**Question 6:**

Nikhil, is a medium sized enterprise owner recently bought a coal mine. Andre (CEO of a new power supplier in South Africa) then entered into a contract with Nikhil in terms of which Nikhil undertook to mine and deliver 500 tons of coal on Friday 30 March at 10:00 to Andre's power plant in Lephalale.

On Friday 30 March at 10:00 Nikhil delivers only 50 tons of coal to Andre's plant and informs him that, after weeks and weeks of mining, they could only mine the 50 tons of coal and also that the mine was actually declared redundant. The whole mine-sale was a scam. Which form of breach of contract occurred and motivate your answer?

**(6 marks)**

**Answer:**

**SUBMISSION BY MONDAY, 4 APRIL , 17:00**

Repudiation- When a party to a legally binding contract expresses the intention to no longer be bound by the contract or any obligations arising out of the contract, a breach of contract occurs. This breach of contract is referred to as repudiation. Repudiation can occur either expressly or by conduct. Repudiation is determined by using an objective test. The test considers whether a reasonable person would believe that the party accused of repudiation has acted in a way that shows that he/she no longer has the intention to fulfil or completely fulfil his/her duties in terms of the contract. If the party accused of repudiation acted in good faith by misunderstanding the content of the contract, he/she would still be liable for breach in terms of repudiation. Thus, repudiation includes an unjustified attempt to cancel the contract, denying the existence of a contract, refusing to perform or accept performance, notification of inability to perform, offering incomplete or defective performance as full performance, insufficient notification of the termination of the contract or the unjustified refusal of an employer to allow an employee to perform his/her duties.

**Question 7:**

Explain why performance must be determined/determinable and give an example.

**(4 marks)**

**Answer:**

Performance, in law, act of doing that which is required by a contract. The effect of successful performance is to discharge the person bound to do the act from any future contractual liability.

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**END**