

Tutorial 8

SUBMISSION BY MONDAY, 16 MAY, 17:00

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NAME:	Click or tap here to enter text.
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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 8: SUBMISSION LINK”.
- Then attach your attempt by clicking/tapping on “Browse Local Files”:

ASSIGNMENT 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, 16 MAY, 17:00**Question 1**

Andrew concludes an agreement with Robert wherein Andrew leases his house to Robert at R20 000 per month for a period of three years). Andrew wants to know from you how the agreement can be finalised.

1.1) Explain to Andrew what a contract of letting and hiring entails. **[2 Marks]**

Answer:

1 party lessor agrees to give to other party lessee use & enjoyment of a thing partially or in full for a period of time in return for a certain /ascertainable price which the lessee undertakes to pay

1.2) Explain to Andrew what the essentialia of a contract of letting and hiring are. **[3 Marks]**

Answer:

- a) The property which is to be leased
- b) The fact that temporary use and enjoyment of the property will be given to the lessee by the lessor
- c) The fact that the lessee will pay to the lessor a determined or determinable amount of compensation in respect of the use and enjoyment of the property

Question 2

Name and **Explain** the three types of contract of letting and hiring which were initially recognised in Roman law, and are still part of South African law.

[3 Marks]

Answer:

- a) Lease of property- This is a written rental contract that sets out terms and conditions between the Landlord and Tenant of a residential property.
- b) Lease of services- Service Lease is a type of lease where the lessor undertakes the responsibility to service all the assets that are leased out by the lessee.
- c) Lease of work- workers covering full civil act capacity, have signed labor contracts with sublease business, to be paid salary by such sublease

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businesses and ensure other benefits to work under the direction of the labour sub-lessee in a specified time

Question 3

Andrew leases his home in Simon's Town to Karabo for R50 000-00 a month. The lease is valid from February 2022 up to December 2022. In terms of the lease agreement, the lessee is required to fully furnish the home. Karabo buys and decorates the home with his own furniture. As of May 2022, Karabo has failed to pay rent for three consecutive months despite numerous demands from Andrew. Advise Andrew on the most suitable remedy.

[4 Marks]**Answer:**

Specific performance- Specific performance is a primary remedy for breach of contract available for the aggrieved party. This order emphasises the performance of contractual obligations. Although the plaintiff can elect to claim specific performance from the defendant, the court has a discretion to grant or decline the order of specific performance. The discretion must be exercised judicially and does not confine on rigid rules. Courts decide each case according to its own facts and circumstances.

Question 4

4.1) The Rental Housing Act only applies to lease agreements for commercial purposes and not housing/residential purposes and will therefore not apply to the lease agreement between Andrew and Karabo **(from question 3)**.

a. True

b. False

4.2) The lease agreement between Andrew and Karabo may be terminated by the passing or effluxion of time but not insolvency.

a. True

b. False

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[2 Marks]

Answer:

Click or tap here to enter text.

Question 5

On 10 April 2022, Mary and Marcus enter into an agreement whereby Mary leases her house in Pretoria to Marcus. In terms of the signed lease agreement, Marcus agrees to pay rent for a period of six months. On 23 May 2022, a severe storm caused the wall in front of Mary's house to collapse. Marcus repeatedly asks Mary to repair the broken wall as soon as possible because it poses a risk to him and his family.

Explain the common law duty that Mary is required to fulfil.

[6 Marks – half marks awarded].

Answer:

The lessor (Mary) is required to maintain the property and provide undisturbed use and enjoyment of the property. According to common law, Mary is required to maintain the property once the contract had been agreed upon. This means that she is responsible for repairing the broken wall in front of the house. She is also required to provide undisturbed enjoyment and use of the property. Due to the broken wall posing a threat, she is required by common law to repair this to allow for the lessee's enjoyment of the property.

Question 6

Peter (the lessor) concludes a lease agreement with Emily (the lessee). After the first month of the lease agreement, Emily fails to pay rent to Peter. What are the possible remedies Peter can institute against Emily in this regard?

Choose the correct statements:

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- I. Specific performance or Cancellation
- II. Damages where it can be proven
- III. Reduction in Rental
- IV. Tacit hypothec

- a. I, II & III
- b. I & II
- c. II, III & IV
- d. I, II, IV

[1 Mark]

Answer:

Click or tap here to enter text.

Question 7

Tim, the lessor, notices suspicious behaviour on the property he rents to Alexis (the lessee). Tim wants to search the property to ensure that there are no illegal goods or substances.

Explain to Alexis her rights she may have against Tim. Refer to relevant legislation in your answer.

(6 marks)

Answer:

The lessor may not in any way deprive the lessee of any benefit to which he/she is entitled to in terms of the lease. Interference with the possession of the lessee entitles him/her to the normal contractual remedies for breach of contract- he/she may claim specific performance, or cancel contract where the interference is substantial, and in both instances claim damages if such were incurred.

Question 8

Match the statement in Column A with the most suitable statement in Column B:

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	Column A		Column B
1	Duties of the Lessor	a	The lessee may transfer his right to a third party
2	<i>Huur gaat voor koop</i>	b	A remedy for an aggrieved lessee who suffers (patrimonial) injury
3	Cession	c	Fulfilment, agreement, set-off, prescription, supervening impossibility of performance.
4	If a lessee suffers damages due to the defective performance of the lessor, she is entitled to compensation provided that the lessor foresaw or should reasonably have foreseen such damages	d	The lessee may transfer his obligation to a third party through this means. The co-operation and consent of the lessor, the lessee and the third party are required for such transfer.
5	Termination of lease agreement	e	When leased property is sold to a third party, the new owner will become the lessor as the lessee has a personal right based on the principle: 'lease goes before sale'
6	To pay rent, to protect and use the property in a proper manner, and to return the property proper condition upon expiry of the lease	f	Deliver, maintain the property
7	Delegation	g	Duties of the lessee

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[7 marks]

Answer:

1.F 2.E 3.A 4.B 5.C 6.G 7.D

END