

FOR SUBMISSION
DUE BY 13 March 2022 AT 17:00

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GROUP:	Click or tap here to enter text.

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”.
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Questions:

1. Define and explain the principle *nemo plus iuris* in your own words. **(2)**

Nemo plus iuris is a rule that states that a person may not give or transfer more rights than they hold.

2. Identify and explain the three categories of consensus. **(6) (2)**

True consensus- reached expressly or through conduct

Assumed consensus- consists of terms implied by the parties involved

Consensus by operation of the law-common law rules, legislation, or trade usage

3. Mary (M) bought R5 555 worth of clothes on account at Edgars. Later, she realized that she was over-indebted and could not pay back the money. She sought help from her uncle Richard (R). R agreed to pay the full amount back to Edgars in monthly instalments. Identify the type of contract between M and R and explain how it can be enforced. **(4)**

Delegation- M could not pay hence she delegated her duty as a debtor to R who is now the new debtor. In order to enforce the delegation, it is vital that all parties are aware of who the new debtor is. Hence Edgars should be made aware that R will be making monthly installments on behalf of M. M should be made aware of when the payments are actually made.

4. Identify and briefly motivate whether the following contractual clauses/provisions as *essentialia*, *incidentalia*, conditions, terms, assumptions, guarantees or a modal clause. **(14 = 2 marks per question)**

4.1 Anna intends to sell her car to Clover. A contractual provision in the contract of purchase and sale stipulate that the purchase price will be R65 000-00.

Essentialia-Anna stipulates the price of the vehicle

4.2 X and Y conclude a contract of lease and in the contract, they include a clause that provides Y can only move in on 21 September 2022.

Incidentalia- X states that Y can only move in after a certain date hence it is arising from their own specific standards

4.3 The full purchase price is payable within 60 days of the seller's death.

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Term- it is uncertain when the seller dies however the seller will die at some point

4.4 The contract is subject to X obtaining a loan from Capitec for R100 000 before 1 May 2022 at an interest rate of 5% per annum.

Condition- suspensive condition, it is not certain what date the loan will be obtained.

4.5 Henna is renting a flat from Mack until Henna dies.

Assumption- the current event of Henna renting a flat means that it's not a term or condition, and it is assumed that Henna will continue renting the flat from Mack until she dies

4.6 Unless the employee resigns, this contract of employment shall remain in force for an uninterrupted period of 10 years, or until the death of either employee or employer, whichever comes first.

Term- resolutive term, the contract will continue until the death of the employer or employee which is certain, even though it is uncertain when the event shall occur

4.7 Amy donates a farm to Vani provided that Vani builds a shelter home for under privileged children.

Modal Clause- Amy donates the farm on the basis that Vani will adhere to her terms which is that she will build a shelter hence it renders it as a modal clause

- 5.** Ashely (A) put up an advert on Property24 for the sale of her house in Brooklyn. Cole (C) got a job in Brooklyn and is looking for a house to rent. Excited to see A's advert, C did not read it in full and conclude that he would rent A's property since it was near his new office. C entered into a contract with A. From the above facts, have the requirements for consensus been met? **(6)**

Serious and true intention- No, C did not read the advert in full

Will of parties corresponds- No, A advertised that she was selling her house, but C wants to rent it

Create legal obligation with consequence- Yes, both parties have entered a contract

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6. Thabang was a very successful soccer player, but Itu (who plays for another team) was jealous of him. One evening while Thabang was riding his bicycle home, Itu ran him over. Thabang fell and broke his leg. The doctor informed Thabang that he could not play soccer for at least 6 months. Thabang had to pay R10 000 for surgery to his leg. Over the 6 months Thabang lost out on the R500 000 that he would have made if he was playing soccer. He also became depressed as a result of not being able to play the sport he loves so much. Fortunately, Thabang knew that it was Itu who did this to him and wants Itu to pay for what he did.

6.1 What type of legal obligation exist between Thabang and Itu? Motivate your answer. **(3)**

There exists a delict- a delict occurs due to a wrongful act or conduct, in this case Itu is guilty of the wrongful act of intentionally running over Thabang's leg out of jealousy.

6.2 Explain what Thabang must prove if he wants to succeed with a claim based on your answer in 6.1? **(5)**

Thabang has to prove that there was intent from Itu to intentionally harm him. Thabang also has to prove that the act was wrongful. Thabang then has to prove that it was Itu who was at fault for his accident. Thabang must also prove the connection between his injury and Itu's intent. And lastly Thabang will need to state his losses both patrimonial and non-patrimonial.

END