



**Question 1**

- a) K commits *mora debitoris* (delay by the debtor) (1) and positive malperformance (1).
- b) V commits positive malperformance (1) and *mora debitoris* (delay by the debtor) (1).
- c) V commits repudiation (1).

[5]

**Question 2**

Typical forms of these agreed remedies:

- Acceleration clause where specific performance in terms of the contract is the objective (1).
- A *Lex commissoria* that governs the parties's right to cancel the contract (1).
- A penalty clause in terms of which the parties fix the amount of damages to be paid (1).
- It is important to note that the agreed remedies are usually intended to exclude the common law remedies (1).
- The party cannot choose to implement the common law remedies rather than the agreed remedies unless the contract so provides (1). [4.53-4.54]

[5]

**Question 3**

- Release (1), provided that B accepts the release, because it is based on consensus (1).
- Set-off (1).
- Impossibility of performance (1).
- Merger (1).

[5]

**Question 4**

- a) The contract is void (1), because A did not have written consent from V during conclusion of the contract as required by section 2(1) of the Alienation of Land Act 68 of 1981 (1).
- b) The contract is valid (1), because written consent is not required if the contract was concluded at public auction (1).
- c) K can claim the following from V:
  - Interest (at the prescribed rate) on the paid deposit of R100 000 (1);
  - Repayment of the deposit paid: R100 000 (1);
  - Reasonable compensation (1) for the necessary repairs of the roof (1).
- d) V can claim the following from K:
  - Repair costs for the outside walls (1);
  - Reasonable compensation for the occupation of the house (1).

[10]

**Question 5**

- a) V bears the risk (1), because the suspensive condition (obtaining of a loan) has not been fulfilled (1) and the contract of sale is not yet *perfecta* (1). [Max 2]
- b) K bears the risk (1), because the suspensive condition (obtaining of the loan) is fulfilled (1) and the contract of sale is *perfecta* (1). [Max 2]
- c) V bears the risk (1), because the Consumer Protection Act 68 of 2008 provides that the risk remains with the seller until delivery (1), unless agreed to the contrary, which was not the case in this situation (1). [Max 2] [9.06 - 9.12]

[6]

**Question 6**

- a) **Position between V and K1:**  
Tacit granting of credit (½) as a result of the post-dated cheque (½). Because delivery occurred, K1 became owner of the yacht (½).  
**Position between K1 and K2:**  
Credit sale (½) as delivery and payment did not occur simultaneously (½). Alternatively, tacit credit sale (½) as a result of the surety (security) that K1 claimed (½). Because delivery occurred, K2 became owner of the yacht (½).  
**Position between K2 and K3:**

# **Mercantile Law Memo 2013**

**Dr. B.K. Singh, ,Dr. Angad Tiwary**

## **Mercantile Law Memo 2013:**

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