



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:

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Elements of Mercantile Law, N.D. Kapoor, 38th e, 2020 Kapoor N.D., 2020-01-01 Sultan Chand Sons present the 38th Revised and Enlarged Edition of the book entitled Elements of Mercantile Law This book is specially written for B Com M Com CA CS CMA MBA LLB and Other Commerce Courses of all Indian Universities The book is divided into three Volumes Volume I is Law of Contract Volume II is Company Law and Volume III is Industrial Law The salient features of the present edition are as follows A new chapter on Goods and Services Tax GST has been included in this edition In order to bring uniformity in Tax rates and to simplify the tax mechanism Central Government rolled out Goods and Services Tax GST from 1st July 2017 The Insolvency and Bankruptcy Code 2016 is the Bankruptcy Law of India has been added A chapter on Limited Liability Partnership popularly known as LLP has been added in the present edition LLP combines the advantage of both the Company and Partnership into a single form of organization Volume II of the book on Company Law with Schedules has been thoroughly updated and amended upto 2019

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