

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

FIRST SEMESTER EXAMINATION – 2011/2012

COMMERCIAL LAW I (CIN 1103)

TIME ALLOWED: 3 HOURS

INSTRUCTIONS TO CANDIDATE

- 1) Answer ANY FOUR (4) questions
 - 2) Each question carries twenty five (25) marks
 - 3) Correctly number your answers and please write neatly and legibly
 - 4) Start each full question on a fresh page
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QUESTION 1

- a) Explain the relationship between a legal subject and a legal object giving examples in each. (8 marks)

- b) “The relationship between a legal subject and a legal object and between legal subjects and other legal subjects can be termed a right” Discuss this statement in relation to subjective rights. (12 marks)

- ~~X~~c) Distinguish between a Mortgage and a pledge. (5 marks)

Total [25 marks]

QUESTION 2

- a) Discuss the original methods of acquiring ownership. (10 marks)

b) Using Relevant examples, explain how ownership and possession are protected at law.

(10 marks)

c) Mr Moyo bought a Toyota Vitz motor vehicle from Japan through an agent "Kuma Motors Pvt Ltd." On the 10th of August 2011, he received Bills of lading from the agent in Japan. The container carrying the vehicle left Japan bound for Durban on the 19th of September 2011. However owing to a recent earthquake in Japan, a heavy storm hit the Indian Ocean and the ship was struck by lightning and the car was completely destroyed. Mr Moyo is now claiming a refund from an Agent in Japan who is refusing to pay him. Advise Mr Moyo.

(5 marks)

Total [25 marks]

QUESTION 3

In the law of delict, Discuss the grounds for justification which convert an otherwise unlawful act into a lawful one giving relevant examples in each.

Total [25 marks]

QUESTION 4

a) Consider the legal implications, emphasising differences if any, of the following separate situations.

i) Mandla who runs a second hand shop in Bulawayo advertises a second hand television set in the newspaper at a stated price of US\$700 with a 12 months warranty, Tendai who is the first to respond to the advertisement arrives at Mandla's shop with US\$700 in cash and demands the set. Mandla who has been simply sampling the market refuses to sell but Tendai threatens to sue, claiming that the agreement is complete since he had accepted Mandla's offer.

- ii) As a result of this newspaper advertisement including the warranty, Mandla sells the set to Tendai, However after one month it breaks down due to faulty transformer.
- ③ Tendai Demands that the set be repaired free under the warranty but Mandla refuses claiming that since an advert is not an offer and therefore not part of the agreement, he is not bound by any terms it may contain.
- iii) Mandla has placed the Television set on a display container, ticketed as costing US\$700 and having a 12 months warranty. Tendai removes the set and takes it to the till where he produces US\$700, however Mandla suddenly remembering that he promised the set to another customer and forgot to remove the ticket, politely but firmly refuses to sell, but Tendai claims that he is too late and threatens to sue on what he says is their agreement. (12 marks)

b) Discuss the conditions that should be met before a mistake renders a contract void.

(13 marks)

Total [25 marks]

QUESTION 5

- a) In Dama Vs Bera 1910 TPD 928 an Indian girl who was a minor had been earning her living as a servant for five years. She lived with her parents but retained control over her income and paid a certain amount to them for board and lodging. Following a wage dispute with her employer the question arose whether she had legal capacity to represent herself. Discuss the legal issues arising from the facts, and write brief notes on the contractual capacity of minors. (15 marks)
- b) "In the Law of contract performance to which the parties have agreed must be capable of delivery" Discuss this assertion with reference to physical possibility of performance as a requirement for a valid contract. (10 marks)

Total [25 marks]

QUESTION 6

a) Define and explain the following terms –

i) Suspensive condition

ii) Resolutive condition

iii) Supposition

iv) Modus

(8 marks)

b) A and B entered into a written contract in terms of which, A has to deliver 200kgs of potatoes every Tuesday and Thursday to B as B operates a catering Business in the city centre. For two weeks now A has been attempting to deliver potatoes to B, only to find B's business premises locked. A is claiming compensation from B as the potatoes have gone bad and has had to throw them away. B is refusing to compensate on the basis that he did not benefit from the contract. Will B succeed in his argument. If not what remedies are available to A? (10 marks)

c) Discuss, Repudiation as a form of Breach of Contract.

(7 marks)

Total [25 marks]

END OF PAPER