

**NATIONAL UNIVERSITY OF SCIENCE AND
TECHNOLOGY**

FACULTY OF COMMERCE

**DEPARTMENT OF INSURANCE AND ACTUARIAL
SCIENCE**

**BCOM (HONOURS) DEGREE (ACTUARIAL SCIENCE,
BANKING, FINANCE, FISCAL STUDIES, MANAGEMENT,
INSURANCE, MARKETING)**

COMMERCIAL LAW I 1103 FINAL EXAMINATION

JANUARY 2013

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

- 1. This paper consists of six (6) questions.**
- 2. Attempt ANY FOUR questions.**
- 3. Use authority where necessary.**
- 4. Each question carries 25 Marks.**

QUESTION 1

- a) Define the term law (3)
- b) 'Law is mainly dominated by Roman Duth Law and a little bit of English flavor.' How did English law find its way into the Zimbabwean Legislation? (5)
- c) Discuss the case of Van Breda v Jacobs (10)
- d) What are the disadvantages of stare decisis? (7)

QUESTION 2

- a) Giving examples, what are the main differences between public and private law? (6)
- b) Simon has registered a company called Lucky Seven (Pvt) Ltd. He wants to know about the juridical rights this company can have. Advise Simon. (8)
- c) MrJachi is in a bus going to South Africa. 44 kilometers outside Gwanda town, the bus is stopped by police. Everyone is ordered to disembark so that a search could be conducted. The purpose of the search is to arrest illegal gold dealers. MrSmelltrouble has gold in his pocket and smelling trouble, he puts it in MrJachi's pocket without Jachi's knowledge. MrJachi is found in possession of Gold and taken to the police station. Make your own conclusion on whether MrJachi will be found guilty or not (10)
- d) What is the prescription period for civil claims? (1)

QUESTION 3

- a) Discuss the following three grounds of justification in the following in the law of Delict, citing relevant requirements in each;
- i) Self defence
- ii) Necessity

iii) Voluntary assumption of risk (15)

b) MrNdlovu is a bank teller and is shot by Patrice a bank robber during a robbery. MrNdlovu becomes a paraplegic as a result of the shot and resorts to using a wheelchair. His position improves to such an extent that he returns to work. After six months he is re-admitted to hospital suffering from serious pressure sores and septicemia. These had developed because of his failure sufficiently to shift his position in the wheelchair as he had been advised to do by medical practitioners who treated him. Eventually he dies as a result of pressure sores. His wife now wants to claim delictually from Mr Patrice. Advise the deceased's wife, MrsNdlovu. (10)

QUESTION 4

a) Ayanda is sitting with a group of friends outside the restaurant by the river. She says that she will give \$2000 to anyone who can swim across the river. Mandla a waiter at the restaurant hears the promise but does not say anything. suddenly a child falls into the water from the other side of the river. Mandla, wanting to impress his boss dives into the water and begins to swim to her rescue. As Mandla is approaching the child Ayanda shouts out, "don't think you are going to get my \$2000 because I'm withdrawing the offer! Mandla nonetheless rescues the child and comes out on the other side of the harbor. Explain whether Mandla can claim the \$2000 from Ayanda under contract law. (10)

b) Using examples, distinguish between an option and a preferential right.(8)

c) Mr Jackson buys a Toyota Vitz motor vehicle from Japan through an agent "KUMA MOTORS pvt Ltd." On the 10th of August 2012, 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 2012. 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 the Agent in Japan who is refusing to pay him. Advise Mr Moyo. (7)

QUESTION 5

a) Write brief notes on the following:

i) Modus (2)

ii) Supposition (2)

iii) Resolutivetime clause (2)

b) In each of the following instances, comment on whether breach of contract has occurred or not. Give full reasons for your answer.

i) On the date of delivery of cement, cement wholesalers find Mark's premises locked. Despite numerous calls to Mark, the premises remain locked. (3)

ii) Lisbon, a real Madrid Player consumes a lot of alcohol such that he becomes extremely intoxicated. As a result he's totally incapable of being fit and prepared for match day. (3)

iii) Mr Chou uses blocks to build Mrs Particular's house in Sunnyside. In terms of the agreement, Mr Chou was supposed to use facebricks.(3)

c) Mr and Mrs Jones and her 2½ year-old daughter, Thandiwe, were injured when they were flung from one of the amusement amenities (called the 'jet ride') at the appellant's amusement park at ZITF showgrounds. Subsequent investigation revealed that there had been a failure in the hydraulic system governing the vertical movement of the car in which they had been seated.

The notice in English read clearly and in Bold reads as follows:

'The amenities which we provide at our amusement park have been designed and constructed to the best of our ability for your enjoyment and safety. Nevertheless we regret that the management, its servants and agents, must stipulate that they are absolutely unable to accept liability or responsibility for injury or damage of any nature whatsoever whether arising from negligence or any other cause howsoever which is suffered by any person who enters the premises and/or uses the amenities provided.'

Mr and Mrs Jones want to know from you whether they can institute an action against the company. (10)

QUESTION 6

Cancellation is an abnormal remedy for breach of contract. Discuss instances where cancellation of the contract is justified as a remedy for breach of contract (25)

THE END