

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

**BCOM (ACTUARIAL SCIENCE, BANKING, FINANCE, FISCAL STUDIES,
HUMAN RESOURCES, INSURANCE, MARKETING, ACCOUNTING) HONOURS**

COMMERCIAL LAW 1103

SUPPLEMENTARY EXAMINATION AUGUST 2014

DURATION: 3HOURS

INSTRUCTIONS TO CANDIDATES

- 1. This paper consists of six (6) questions.**
 - 2. Attempt ANY FOUR questions.**
 - 3. Use authority where necessary.**
-

Question 1:

a) Describe how the Roman Dutch law became Common Law in Zimbabwe. [10]

b) Discuss case law as a source of law. [15]

Question 2:

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. [25]

Question 3:

a. Define and explain the following;

i. Ratio Decidendi

ii. Obiter Dictum

iii. Distinguishing [8]

b. List 5 advantages and disadvantages of *stare decisis*. [12]

c. Solomon works on a Welkom goldmine. Before leaving his home in Limpopo he asked his nephew Bheki to look after his cattle during his absence and gave him permission to use the cattle. Everyone in the village now considered the cattle to be Bheki's as Solomon has been gone for 36 years. Bheki uses cattle to fertilise his fields and he sells and consumes the milk. Bheki is telling the whole community that he is now the owner of the cattle.

Discuss the legal issues that arise. [5]

Question 4:

Gabriel is transferred to Bulawayo and is wishing to rent a house from Tracy. He is uncertain whether his wife Nancy who is temporarily still living in Gweru will be satisfied with the house. Tracy gives Gabriel two weeks to reach a final decision as to whether or not he wishes to rent the house.

a. Discuss the following cases briefly,

- i. On the first weekend Nancy comes to visit, but is not satisfied with the house. Gabriel informs Tracy that he will not be renting the house. [2]
 - ii. Natasha approaches Tracy 2 days after the meeting with Gabriel offering to rent her house for a higher amount than that proposed by Gabriel. [4]
 - iii. Nancy becomes ill and manages to travel to Bulawayo only after three weeks. [2]
 - iv. Nancy is so anxious to see the house that she comes to inspect it the very next day. She likes it and Gabriel informs Tracy of their decision to rent the house. [2]
- b. Using examples in each case, explain how ownership and possession are protected. [10]
 - c. Explain the difference between a void and a voidable contract. [5]

Question 5

- a) Jessica visited a big departmental store, BUY n Build, to purchase a wheelbarrow. The wheelbarrow she wanted was on sale for \$100. Jessica took it to the till. On seeing this, Mrs Moneybags who is a renowned client quickly rushed to the till operator demanding that Jessica should give it up so that she might purchase it. The proprietor of BUY n BUILD, Mr Favors, took the wheelbarrow from Jessica and gave it to Mrs Moneybags. Jessica feels a deep sense of grievance and is now contemplating the possibility of suing the department store for 'breach of contract'. Advise Jessica [8]
- b) Farai pays Mandla \$50 000 to divorce his wife Wendy because he (Farai) wants to marry Wendy. However, Mandla has second thoughts and refuses to divorce his wife as agreed. Is Farai legally entitled to enforce Mandla's performance or alternatively to demand the sum of \$50 000 back. Discuss the legal issues that arise. [10]
- c) Buhle finds a diamond ring in the street and hands it over to the police. Afterwards she learns that the owner, David had offered a reward of \$10 000 for the recovery of the ring, but David says that he can no longer afford to pay. Advise Buhle whether she can successfully sue for the \$10 000 giving reasons for your advice. [7]

Question 6:

Critically discuss cancellation as a remedy for breach of contract. [25]