

**NATIONAL UNIVERSITY OF SCIENCE AND
TECHNOLOGY**

FACULTY OF COMMERCE

**DEPARTMENT OF INSURANCE AND ACTUARIAL
SCIENCE**

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

COMMERCIAL LAW II 1204 FINAL EXAMINATION

MAY 2014

DURATION: 3HOURS

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) Name and discuss the essentials of a valid contract of purchase and sale.(8)

b) Mthabisi has a construction company and he ordered 200 bags of Tylon Cement from Cement Wholesalers Limited on the 24th November 2010 in preparation for the festive season sales in December and pays in advance for his order which will according to the Sales representative of the company be delivered to him by the 15th December 2010 at the very latest because it was yet to be imported from Italy. His order is eventually delivered to him on 20 December 2010. The Explanation for the Delay in delivery was that Cement Wholesalers' employees were on strike over their unpaid salaries for over six months. When the order is delivered to him the driver gives him an invoice including an additional duty, which the government has imposed on imported Tylon Cement and informs him that he has strict instructions not to offload the order unless the additional amount of the duty was paid on delivery. Mthabisi paid the amount of the duty in order to obtain the cement. He learned subsequently that the duty was only imposed on the day before the delivery was made to him. His 200 Bags of cement had been stacked together separate from the rest of the stock of Cement Wholesalers Limited since the 15th December, 2010. They had been marked with his name and were shown to him by the salesman on that date.

Advise Mthabisi on whether he was liable to pay the additional duty.(12)

c) In defective delivery, sellers are liable for the defects found. To avoid such liability, they use special sales such as *Voetstoots*, meaning "as it stands" or "with all faults", but there are conditions behind this:

i) State two of these. (2)

ii) In case the seller is found liable, state three remedies for the purchaser. (3)

QUESTION 2

Discuss the following in the law of lease:

a) *HuurGaatVoor Koop*; and(7)

b) Landlord's tacit hypotheec.

(8)

c) X employs Y as a driver of his delivery vehicle. His duties are limited strictly to deliver small orders within a radius of 30km of X's business premises and warehouse. He is specifically prohibited from carrying any passengers including X's employees and signs an undertaking not to do so. One day whilst driving along on a delivery, A, an employee of X, meets Y at premises where he is making a delivery and requests him to take him and a relative to a clinic approximately 10km beyond the area in which Y makes his deliveries. Y does so after completing the deliveries he still had in hand. Whilst on the way to deliver A and his relative to their destination, at a regulated intersection, Y is involved in a collision with another vehicle. In consequence A is instantly killed and both vehicles are severely damaged.

Advise both X and Y of their legal liabilities, if any. (10)

QUESTION 3

a) Mr. Mzombi is a sole trader and he forms a limited liability company to which he transferred all his business interests and property to this newly established company. Mr. Mzombi is the sole shareholder of the company. Among the property transferred is a consignment of timber. This timber is insured in the name of Mzombi by Nicoz Diamond against risk of destruction or damage by fire. The Timber is destroyed by fire and Mzombi claims compensation from Nicoz Diamond. Nicoz Diamond refuses to pay arguing that Mr. Mzombi does not have insurable interest. Advise Mr. Mzombi. (6)

b) Explain the following principles in the law of insurance:

i) Contribution; (5)

ii) Subrogation. (5)

c) "The agent must have the authority or mandate of his principal to act on the latter's behalf and must act strictly in accordance with such authority or mandate." Discuss this assertion with reference to types of authority." (9)

QUESTION 4

a) With reference to decided cases, evaluate the circumstances where a court may lift the corporate veil. (10)

b) Set out briefly the major advantages of companies over other forms of business organizations with reference to the characteristics of companies. (15)

QUESTION 5

- a) What is a mortgage bond and outline the essentials of a mortgage. (7)
- b) Write brief notes on suretyship as a form of security. (10)
- c) Describe how agency contract is terminated. (8)

QUESTION 6

a) Mr. and Mrs. Ndlovu have been married for 18 years. They are also running a partnership business where both of them are equal partners. Mr. Ndlovu was recently sequestered for failing to pay his debts as they fall due. Mrs. Ndlovu is very worried about her husband's sequestration and comes to you for advice. She wants advice on the following matters:

- i) Effects of sequestration ; (5)
- ii) Whether their partnership will also be affected by a sequestration order against her husband; (5)
- iii) Whether the car her husband donated to her five months prior to the sequestration order as a birthday present will also be part of the insolvent estate; (5)
- iv) Whether their goods like beds, stove, chairs, television set and other household furniture will also form part of the insolvent estate; and (5)
- v) Whether \$10 000 which was paid to Paula construction Ltd last week just three days before the sequestration order will also be reversed as a voidable disposition. (5)