

B. COMM. (HONOURS) DEGREE

COMMERCIAL LAW I (CIN 1103)

FIRST SEMESTER EXAMINATION – DECEMBER 2001

DURATION : 3 HOURS

Instructions to candidates

1. Answer five questions (5) only.
2. Question 1 is compulsory.
3. All questions carry equal marks.

Question 1

- (a) Chidodo, a schoolboy, aged 16, entered into a contract for the purchase of a car. He neglected to take out any insurance, drove the car and was involved in an accident in which the car was totally destroyed. The Vendor of the car wishes to recover the price from Chidodo.

Advise him whether he is likely to succeed. Would your advice be different if Chidodo had left school and was working as a travelling salesman?

[10 marks]

- (b) G misappropriated K's money, his employer who threatened G's wife that, if she did not promise to make good the amount out of her own property, he would prosecute her husband. In consequence, G's wife agreed to do so on the express terms that there should be no prosecution.

Can the contract be enforced against her?

[6 marks]

- (c) Explain the following elements of the Law of contract:
- (i) contracts of record.
 - (ii) contracts under seal.
 - (iii) simple contracts.

[4 marks]

Question 2

- (a) Taurayi, who is the sole supporter of his family, neglects for two weeks to give his wife, Rudo, money for food.

Rudo finally visits a grocery store where she purchases on credit enough food to feed her children and herself. Taurayi refuses to pay the bill.

- Is Taurayi liable to pay the bill? **[10 marks]**
- (b) Explain the meaning of the following terms:
- (i) *Stipulatio Alteri*;
 - (ii) Suspensive condition; and
 - (iii) Resolutive condition.
- [10 marks]**

Question 3

For several years, Bert acts as an agent collecting rents on apartments for George. George terminates the relationship because he feels that Bert is unreliable. Bert continues to collect for a month and keeps the money himself. When George visits to collect rent, the lessees inform him that they have already paid the rent to Bert and were not aware that Bert was no longer authorised to collect . Who is liable for the payment of the rent?

Discuss the liability of the parties.

[20 marks]

Question 4

- (a) The plaintiff bought a lorry from the defendant who induced him to buy by misrepresenting its condition. It soon proved to be defective. The plaintiff pointed out the defects to the defendant, who agreed to pay half the cost of remedying one of them but denied the existence of the others. The plaintiff asked the defendant for the return of money back, but the defendant refused. Later an expert pronounced that the lorry was not roadworthy. The plaintiff sued for rescission. Will he succeed?

[10 marks]

- (b) Briefly describe and distinguish the contractual capacity of:
- (i) Insolvents;
 - (ii) Drunkards;
 - (iii) Lunatics and the mentally ill; and
 - (iv) Alien enemies.

[10 marks]

Question 5

- (a) The importance of custom as a general source of law has diminished because most customs have been absorbed by legislation or judicial precedent.

Comment.

[10 marks]

- (b) The doctrine of judicial precedent presupposes an hierarchy of courts. A decision of the High Court of Zimbabwe must be followed by all other courts and take priority over any other conflicting decisions.

Discuss.

[10 marks]

Question 6

Describe in detail the following Zimbabwe Courts with special reference to civil and criminal jurisdiction, composition, procedure, appeals and reviews.

- (a) Magistrates Courts;
- (b) The High Court;
- (c) The Supreme Court.

[20 marks]

Question 7

Mrs Brooks, a clerk/typist in the employ of B, an attorney, fraudulently induced her friend W, to invest \$3000 in B's firm. W handed Mrs Brooks a cheque in favour of B and Mrs Brooks gave her a forged receipt. Mrs Brooks then induced B to pay the money to her on the pretext that the cheque was a loan to her which for convenience she had had made out in his favour. When B later refused to pay interest on the money to W she sued to recover it. W contended, inter alia, that B was estopped from denying that he had authorised Mrs Brooks to borrow the money on his behalf.

Can the principle of estoppel be relied upon?

[20 marks]

END OF EXAMINATION