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NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

B. COMM (HONOURS) DEGREE

COMMERCIAL LAW : CIN 1103

NOVEMBER/DECEMBER 2004 FIRST SEMESTER EXAMINATION

DURATION: 3 HOURS

Instructions to Candidates

1. Answer all the questions
2. Substantiate your answers with reference to relevant case law, Legislation or authority where possible.

Question 1

- a) Name the sources of Zimbabwe law [5 marks]
- b) What are the requirements that need to be satisfied
Before a custom will be con-idered to have the effect
of a legal principle? [4 marks]
- c) Distinguish between civil & criminal law [4 marks]
- d) Discuss the structure and hierarchy of the Magistrates'
Court (Civil). [7 marks]

Question 2

John has an altercation with Fred in Bulawayo. As a result, John assaults Fred such that Fred has to seek medical treatment. The Police are called and John is charged with assaulting Fred. Fred now wishes to claim damages for the assault perpetrated on him by John.

- i) Which Court will have jurisdiction to try John of the criminal charge of assaulting John? In the event, that John is convicted and sentenced, to which court will John have to appeal to against both conviction and sentence?
- ii) In which court will Fred launch proceedings to claim damages amounting

to \$2 million?

In the civil trial, it emerges that Fred was not permitted to present and call his witnesses and was being frequently interrupted by the trial court.

What should Fred do? [20 marks]

Question 3

a) Define a contract [3 marks]

b) Name the requirements for the formation of a valid contract [5 marks]

c) What effect does:

i) misrepresentation have on the validity of a contract

ii) mistake have on the validity of a contract

iii) duress have on the validity of a contract

[9 marks]

d) What is subjective impossibility and what effect does it have on the validity of a contract

[3 marks]

Question 4

John is the owner of a vacant stand and he concludes a contract with a builder, Peter, in terms of which Peter must build him a house on the stand according to a plan supplied by John. In terms of the contract, Peter must start building operations on 01 January 2004 and the house must be completed on 01 July 2004. Peter will be paid in full upon completion of the job.

In each of the following instances, indicate whether the conduct of one of the parties amounts to breach of contract. If it does, identify the type of breach. Should you be of the opinion that breach of contract does not occur, explain the legal position.

i) John's stand is enclosed by a high electrified fence and there is only one gate permitting access to the stand. On January 2004, Peter arrives at the stand with his team of builders to start work but they cannot enter the premises because John has neglected to unlock the gate. Despite several telephonic requests to John, the gate is still locked a week later.

- ii) John informs Peter on 01 December 2003 that his stand has been expropriated By the government and they cannot proceed with the building.
- iii) Peter does not arrive to commence building operations on 01 January 2004 And despite several repeated telephonic requests, building has not started by the end of January 2004.
- iv) Peter informs John on 01 December 2003 that he has accepted a position With a big construction company and that he will no longer be able to build John's house.
- v) John informs Peter on 01 December that he has bought another stand and that He no longer wants a house on the original stand but would prefer Peter to build an apartment block on the new stand. Peter agrees to start building the apartment block on the new stand on 01 January 2004.
- vi) Peter completes the house on 01 July 2004 but it transpires that the house is 15 sq m smaller than the specifications required by the plans.

[20 marks]

Question 5

a) Name the ways in which an obligation is terminated

[5 marks]

b) How is the contract of agency terminated

[4 marks]

c) Name the types of agents in contracts of agency

[3 marks]

d) Name some of the rights and duties of agents

[5 marks]

e) Name some of the instances where a court will not enforce an order for specific performance

[3 marks]

TOTAL: 100 MARKS

END OF EXAMINATION PAPER!!!