

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

B.COMM (ACTUARIAL SCIENCE) HONOURS DEGREE

COMMERCIAL LAW I – CIN 1103

NOV/DEC 2005 FIRST SEMESTER EXAMINATION

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer all the questions.
2. Substantiate your answers with reference to authority where possible.

QUESTION ONE.

- a) Briefly discuss *Roman-Dutch Law* as a source of Zimbabwean Law. Your answer must include reference to the ‘Old Authors’.
- [8 marks]**
- b) Why does the ‘*Stare` Decisis*’ principle apply in our law? Explain how the principle applies and what are its advantages.
- [12 marks]**
- c) Briefly distinguish between Substantive Law and Formal Law.
- [5 marks]**

TOTAL: 25 MARKS

QUESTION TWO.

- a) Samantha lives and works in Bulawayo. Whilst on holiday in Victoria Falls, she meets Pauline who lives and works in Mutare. Together, Pauline and Samantha enter into a Contract which they conclude in Victoria Falls in terms of which Pauline must deliver Certain goods to Samantha upon receiving the purchase price from Samantha. Samantha pays the purchase price of Z\$200 million to Pauline but Pauline refuses to Deliver thereby committing breach of Contract. Samantha now wishes to institute Action in the appropriate Court for breach of contract. Discuss which Courts of Zimbabwe will be vested with jurisdiction to deal with this matter. You must clearly indicate which Court/s has/have jurisdiction and comment on why

It has jurisdiction.

Would your answer be any different if Pauline lived and worked in South Africa and Did not own any assets or property in Zimbabwe?

What would be the position if Samantha lived and worked in South Africa?

[18 marks]

- b) Briefly explain which cases the Small Claims Courts have jurisdiction to adjudicate on and, to which Court lies review and an appeal.

[7 marks]

TOTAL: 25 MARKS

QUESTION THREE

- a) Explain the difference between a void contract and a voidable contract.

[5 marks]

- b) X, the owner of Tex-Mex Baked Chicken takeaways concludes a written franchise contract with Y in terms of which Y may conduct a chicken take-away service under such name in an adjacent town in return for which he must pay a fixed sum of money to X every month. The contract specifies that if it is cancelled for whatever reason, Y may not conduct a similar business within a radius of 100km for a period of two years. Six months later, Y lawfully cancels the contract and opens a similar business within a 100km radius under a different name. X, now seeks to enforce the relevant clause in the contract. X, has no plans to expand his business within a 100km radius or elsewhere. Discuss whether the relevant clause should be enforced or not.

[8 marks]

- c) X concludes an illicit contract with Y in terms of which X, being an unlicensed emerald dealer, sells Y, 5 uncut emeralds for Z\$5 million. Y hands over the Z\$5 million but X refuses to hand over the emeralds.

- i) Will Y be successful in obtaining delivery of the emeralds? Explain.
ii) Will Y be successful in reclaiming the Z\$5million he has already paid? Fully explain the legal position.

[7 marks]

- d) Margaret walks into a restaurant, orders a steak, waits for 5 minutes then walks out because she has not received her food.

- i) Did the restaurant commit breach of contract? Explain.
ii) What possible type of breach of contract is present here? Explain.

[5 marks]

TOTAL: 25 MARKS

QUESTION FOUR

a) Fred wishes to purchase a home in an elite area of Harare. He therefore instructs Rita to search and purchase one for him on his behalf. Rita discovers a home in an elite are of Harare. Robert also has plans to purchase the same piece of property that Rita intends buying on behalf of Fred. Robert, it turns out, is a client of Rita's and has been for several years now. Under the circumstances, What should Rita do?

[8 marks]

b) When is a court likely to grant an order for specific performance?

[5 marks]

c) Jonathan wishes to purchase a bicycle from Eric, the transaction being a A cash sale. When Eric requests for the payment from Jonathan, Jonathan Claims that Eric should deliver the bicycle first. What principle of contractual Law is Eric relying on and is he likely to succeed? Give full reasons for your Answer.

[8 marks]

d) Name the ways in which a contract of agency is terminated

[4 marks]

TOTAL: 25 MARKS

END OF EXAMINATION
