

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

BCOM (HONOURS)(ACTUARIAL SCIENCE, BANKING, FINANCE,
FISCAL STUDIES, MANAGEMENT, INSURANCE, MARKETING)

COMMERCIAL LAW1 [CIN 1103]

SUPPLEMENTARY FINAL EXAMINATION-AUGUST 2013

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) What is the importance of the following:

i) *Ratio Decidendi*;(4)

ii) *Obiter Dictum*; and(3)

iii) Distinguishing.(3)

b) Discuss customary law as a source of law.(10)

c) Explain the hierarchy of courts system of Zimbabwe.(5)

QUESTION 2

- a) Discuss only five forms of delivery using examples in each case.(15)
- b) Discuss the original methods of acquiring ownership.(10)

QUESTION 3

- a) "*A general equitable principle that no person should be allowed to profit at another's expense without making restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained.*" Discuss this assertion in relation to unjustified enrichment claims. (10)
- b) Discuss instances where the *caveate subscriptor* rule does not apply.(15)

QUESTION 4

- a) Patience in Harare makes a written offer by letter to Patricia in Bulawayo to purchase hercottage for \$20 000.Patricia accepts her offer by letter but while the letter is in transit, she receives an offer of \$50 000 from Milton. What should Patricia do if she wishes to accept Milton's offer? Explain with reference to existing legal theories and how they operate. (10)
- b) Jonathan pays Thabani \$50 000 to burn down the Ceremonial Hall. However, Thabani has second thoughts and refuses to perform as agreed. Is Jonathan legally entitled to enforce Thabani's performance or alternatively to demand the sum of \$50 000 back. Discuss.(10)
- c) List the five requirements of a valid contract.(5)

QUESTION 5

- a) Nomagugu and Kossam entered into a written contract in terms of which, Nomagugu has to deliver 200kgs of potatoes every Tuesday and Thursday to Kossam as Kossam operates a catering Business in the city centre. For two weeks now Nomagugu has been attempting to deliver potatoes to Kossam, only to find Kossam's business premises locked. Nomagugu is claiming compensation from Kossam as the potatoes have gone bad and has had to throw them away. Kossam is refusing to compensate on the basis that he did not benefit from the

contract. Will Kossam succeed in his argument? If not what remedies are available to Nomagugu? (10)

b) What is a latent defect and what remedies are available to the buyer under the sellers' implied warranty against latent defects in the thing sold?(15)

QUESTION 6

Lucas a computer dealer decides to sell his computer, monitor, and printer. He advertises them for sale in the Chronicle Newspaper, a daily publication circulating in Bulawayo containing details of items available for sale. Lucas indicates in the advertisement that the items are for sale for \$2000.

By arrangement with Lucas, Mr Nkomo comes to inspect the equipment and offers Lucas \$1750. Lucas rejects this offer from Nkomo, but then says to Nkomo; "Leave Your address and phone number, and i will write or telephone you if I do not get a better offer, as i want to have it sold this weekend".

Nkomo leaves his address and telephone number with Lucas. Two days later, Nkomo receives a telephone call from Lucas, who says; "i will sell the equipment for less than \$2000, but not for \$1750. Would you be prepared to increase your offer?"

Nkomo replies "i will give you \$1900 if you deliver the equipment to my home and install it for no extra charge". Lucas replies "i will think about it. I will let you know in a few days".

After a further 2 days, Nkomo decides to buy the equipment for \$1900 even if Lucas will not deliver and install it free of charge. Nkomo telephones Lucas to inform him of his decision, but Lucas is not at home. So Nkomo writes to Lucas that evening, saying; "i will buy the equipment for \$1900 and you need not deliver or install it. I will come around on the weekend and collect it, and bring \$1900 cash".

Nkomo posts this letter to Lucas at 9 o'clock on Wednesday evening. On Friday evening, Lucas telephones Nkomo and says; "Don't bother coming at the weekend. I have already sold the computer for \$1800 cash". Advise Nkomo as to his legal position. (25)