

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY**

**BACHELOR OF COMMERCE HONOURS DEGREE**

**COMMERCIAL LAW II – CIN 1204**

**DECEMBER 2002 2<sup>ND</sup> SEMESTER EXAMINATION**

**DURATION : 3 HOURS**

**INSTRUCTIONS TO CANDIDATES**

1. Answer any five questions.
  2. All questions carry equal marks.
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**Question One**

Discuss the following terms:-

1. *actio redhibitoria* [5 marks]
  2. *actio quanti minoris* [5 marks]
  3. a sale by AUCTION [5 marks]
  4. a sale by description [5 marks]
- [Total 20 marks]**

**Question Two**

The process of delivery is a legal concept, so that besides actual delivery, the law also recognizes CONSTRUCTIVE DELIVERY. Discuss, with the aid of case authority and/or examples the 5 types of CONSTRUCTIVE DELIVERY.

**[20 marks]**

**Question Three**

- (a) State and explain the main provisions of a hire purchase agreement. [10 marks]
- (b) Write brief notes on both of the following:
- (i) “Removal of goods” under section 10 and 11 of the hire Purchase Act (Chapter 14:09) [5 marks]
  - (ii) The passing of ownership under a hire-purchase arrangement. [5 marks]
- [Total 20 marks]**

#### **Question Four**

Sam and Ben met over lunch one day to negotiate the buying by Sam of a pedigree cow from Ben. The two parties agreed to enter into a contract of sale and they took some time to examine and admire the animal. They eventually agreed not to fix a price but instead to wait for the prices of cattle to stabilize so that Sam could pay a reasonable price for the cow. A few days after the meeting there was a heavy storm. The cow, which had been the subject of negotiations, was struck by lightning and it perished in the storm. Ben's lawyers have since written to Sam demanding payment of \$5 000 being the current market value of the pedigree cow like the one which perished in the storm. Identify the issues involved in this case and advise Sam.

**[20 marks]**

#### **Question Five**

Bob arrives at Cheap Bank in order to deposit cash of \$1 000 000.00 (one million dollars). As Bob approaches the bank teller within Cheap Bank and places his bag containing all the money on the table, a gang of robbers enters and holds up the bank. Amongst the monies robbed is the \$1 000 000.00 (one million dollars) which Bob had. Bob now sues the bank for loss of his monies. What is the legal position?

**[20 marks]**

#### **Question Six**

1. Define a lease agreement **[5 marks]**
  2. What is meant by the phrase "LANDLORD'S TACIT HYPOTHEC" **[5 marks]**
  3. What are the duties of the lessor under a lease agreement? **[5 marks]**
  4. What are the duties of the lessee under a lease agreement? **[5 marks]**
- [Total 20 marks]**

#### **Question 7**

- (a) In terms of Section 11 of the Insolvency Act (Chapter 6:04) when is a person deemed to have committed an act of insolvency? **[10 marks]**
  - (b) State 5 main effects of sequestration to the insolvent under the law of insolvency. **[10 marks]**
- [Total 20 marks]**

#### **Question 8**

B in Cape Town buys goods from A in Japan, delivery C.I.F. The ship conveying the goods is wrecked on the voyage to South Africa, and the goods are lost. B has received from A invoices and bills of lading relating to the goods. B then sues A for the purchase price. Discuss whether B should succeed.

**[20 marks]**

**Question 9**

Define the following terms in relation to honouring of cheques:

- |    |                       |                         |
|----|-----------------------|-------------------------|
| 1. | “Signature differs”   | <b>[4 marks]</b>        |
| 2. | “Payment stopped”     | <b>[4 marks]</b>        |
| 3. | “Effects Not Cleared” | <b>[4 marks]</b>        |
| 4. | “Post-dated”          | <b>[4 marks]</b>        |
| 5. | “Refer to Drawer”     | <b>[4 marks]</b>        |
|    |                       | <b>[Total 20 marks]</b> |

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**END OF EXAMINATION**