

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

BACHELOR OF COMMERCE (HONOURS) DEGREE

COMMERCIAL LAW II (CIN 1204)

MAY/JUNE 2005

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. ANSWER ALL THE QUESTIONS.
2. SUBSTANTIATE YOUR ANSWERS WITH REFERENCE TO AUTHORITY WHERE POSSIBLE

QUESTION ONE

a) Name, the “essentialia” for:

- i) A contract of sale
- ii) A contract of lease

[7 marks]

b) In contracts of sale, the seller has certain duties. Discuss 2 of these duties

[10 marks]

c) X sells Y a 1995 Mercedes Benz Motor-vehicle for Z\$80 million. Y takes delivery of the motor-vehicle, and one day, whilst driving home with the vehicle, is stopped by the Police, who advise him that the vehicle is stolen and they impound the vehicle. Briefly Discuss the options available to Y.

[8 marks]

TOTAL: 25 marks

QUESTION TWO

a) What is the relevance of ‘*perfecta*’ in contracts of sale and what are the requirements that need to be present before a sale is considered ‘*perfecta*’?

[5 marks]

b) Section 22 of the Commercial Premises Regulations makes reference to a ‘Statutory Tenant’. Discuss this provision briefly.

[5 marks]

c) X leases a shop to Y, who moves into the shop with all his equipment. A few months later, Y falls into arrears with his rentals. Advise X whether he can do anything about the arrear rentals. **[10 marks]**

d) Name the “essentialia” for a partnership. **[5 marks]**

TOTAL: 25 Marks

QUESTION THREE

a) X applies for life cover on his own life. He is unaware of the fact that he suffers from a terminal disease. Consequently, he does not disclose this fact in the proposal form for insurance. Will the insurer be able to avoid the contract on the grounds of a breach of contract by X of his duty to disclose? Will it make any difference if X was aware of the disease? Suppose X contracted the disease only after the policy has been insured: must he disclose this fact to the insurer? **[12 marks]**

b) Briefly explain what actions a partner has at his disposal to compel the other partners of the partnership to observe their rights and duties of the partnership. **[6 marks]**

c) Describe the main types of insurance warranties **[7 marks]**

TOTAL: 25 Marks

QUESTION FOUR

a) Illustrate, by means of examples, the characteristics of negotiable instruments. **[6 marks]**

b) Name the parties to a Bill of Exchange. **[3 marks]**

c) Explain what is meant by a ‘holder in due course’. **[4 marks]**

d) The Labour Relations Amendment Act 17 of 2002 sets out what details, an employer must provide to an employee, in writing, upon engaging an employee. With discussion, name these details. **[5 marks]**

e) Section 11 of the Insolvency Act (Chapter 6: 04) lists 9 acts of Insolvency that a debtor is deemed to have committed. Name 7 of these acts of Insolvency.

TOTAL: 25Marks

END OF EXAMINATION
