

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

BACHELOR OF COMMERCE (HONOURS) DEGREE

COMMERCIAL LAW II (CIN 1204)

SECOND SEMESTER SUPPLEMENTARY EXAMINATIONS 2005

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

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

- a) Describe and explain what is meant by “*Stare Decisis*”.
[8 marks]
- b) Distinguish between Physical Laws and Normative Laws.
[4 marks]
- c) Name three (3) Old Roman-Dutch Law authors. [3 marks]
- d) Distinguish between Substantive and Adjective (formal) law.
[4 marks]
- e) Explain the difference between law, positive morality and ethics.
[6 marks]

TOTAL: 25 Marks

Question 2

In each of the following cases, indicate and explain whether Nothando has approached and instituted action in the proper Court.

- i) Nothando’s deceased father left her substantial property in terms of a written will prior to his death. Nothando’s elder sister Thandiwe claims that the will prepared and executed by their father prior to his death is invalid because it was made while their

father was under duress. Nothando approaches the Magistrates' Court for an order declaring the will to be valid

[5 marks]

ii) Nothando has been divorced from her husband for some time now, but he has been neglecting to pay her maintenance. Nothando now wishes to claim arrear maintenance totaling Z\$12 million and approaches the Small Claims Court.

[5 marks]

iii) Nothando is charged of armed robbery in the Regional Court. She is convicted and sentenced to a term of imprisonment. Nothando wishes to appeal and lodges her appeal with the Supreme Court.

[5 marks]

iv) Two (2) of Nothando's tenants in Bulawayo have failed to pay her the rent for over two months now. In addition, these two tenants have been conducting illegal activities at the premises Nothando has leased out to them. Nothando is advised to evict and eject these tenants and commences action in the Bulawayo High Court.

[5 marks]

v) After Nothando's divorce, she gets acquainted with Themba and thereafter decides to get married to him customarily. She goes with Themba to his rural home and they get married at the Customary Local Court.

[5 marks]

TOTAL: 25 Marks

Question three

a) Define a contract

[3 marks]

b) Name the requirements for a valid offer AND a valid acceptance

[6 marks]

c) What are the remedies for a fraudulent misrepresentation?

[3 marks]

d) What are the requirements that need to be established before duress is said to have occurred?

[5 marks]

e) Olga concludes a hairdressing contract with Cindy for a training period of two (2) years. In terms of the contract, Olga is not allowed to work as a hairdresser for a period of 12 months after the termination of the contract.

Olga wishes to start a hairdressing business of her own at the end of her Training period. Olga decides to contest the provision prohibiting her From doing so.

- i) Identify the legal principle/s involved in this matter and explain whether such a provision in a contract is enforceable.

[8 marks]

TOTAL: 25 Marks

Question Four

- a) Charles walks into a restaurant, orders a steak, waits for five minutes, then walks out without having received his food. Discuss whether any of the parties involved commits breach of contract.

[6 marks]

- b) Tom and Jerry enter into an illicit emerald contract in terms of which Tom will sell 10 uncut emeralds to Jerry at a price of \$100 000-00 per emerald. Jerry pays \$1 million to Tom for the 10 emeralds, but Tom refuses to hand Over the emeralds to Jerry. Discuss the legal position.

[8 marks]

- c) What is supervening impossibility and what effect does it have on a contract?

[5 marks]

- d) What is the *exception non adimpleti contractus* and when can it be successfully raised by a party to a contract?

[4 marks]

- e) Name 2 ways in which an obligation is terminated.

[2 marks]

TOTAL: 25 MARKS

END OF EXAMINATION PAPER