

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

BACHELOR OF COMMERCE (HONOURS) DEGREE

COMMERCIAL LAW II (CIN 1204)

DURATION: 3 HOURS

COMMERCIAL LAW- SUPPLEMENTARY EXAMINATIONS 2005

ANSWER ALL THE QUESTIONS, BUT NOTE THE CHOICES THAT YOU HAVE IN QUESTIONS 1, 3 and 4.

SUBSTANTIATE YOUR ANSWERS WITH REFERENCE TO AUTHORITY, WHERE POSSIBLE.

Question One

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

TOTAL: 25 Marks

Question Two

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 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 in terms of the Marriage Act. Her former spouse, however, has been neglecting to pay her maintenance for a lengthy period. 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 lengthy term of imprisonment. Nothando wishes to appeal against the decision and lodges her appeal with the Supreme Court of Zimbabwe. **[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 that Nothando has leased out to them. Nothando is advised to evict 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
OR
Name the requirements for a valid acceptance **[3 marks]**
- c) What are the remedies available for a fraudulent misrepresentation? **[3 marks]**
- d) What are the requirements that need to be established before duress is said to have occurred? **[3 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 starting her own hairdressing business.

Identify the legal principle/s involved in this matter and explain whether such a provision in a contract is enforceable. **[8 marks]**

- f) Distinguish between any TWO of the following:

- i) the “*essentialia*” of a contract;
 - ii) the “*naturalia*” of a contract;
 - iii) the “*incidentalialia*” of a contract.
- [5 marks]**

TOTAL: 25 Marks

Question Four

- a) Charles walks into a restaurant, orders a steak, waits for 5 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 and illegal contract in terms of which Tom will sell 10 uncut emeralds to Jerry at a price of \$100 000-00 per emerald. Jerry pays Z\$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 the status of Wagering, gambling or betting contracts?

OR

What is the *exceptio non adimpleti contractus*? **[3 marks]**

- d) What is supervening impossibility and what effect does it have on a contract? **[4 marks]**

- e) Name four (4) ways in which an obligation is terminated **[4 marks]**

TOTAL: 25 Marks

END OF EXAMINATION
