

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY
BACHELOR OF COMMERCE HONOURS DEGREE**

COMMERCIAL LAW II - CIN 1204

APRIL/MAY 2006 SECOND SEMESTER EXAMINATION

DURATION : 3 HOURS

Instructions to Candidates

1. Answer four questions, two questions from Section A and the other two questions from Section B. Question 1 in Section A is compulsory.
 2. All questions carry equal marks.
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SECTION A

QUESTION 1 (Compulsory question)

Discuss how the common law of contract of sale has been modified by statute law in Zimbabwe. Make specific reference to the Contractual Penalties Act (Chapter 8:04) and the Consumer Contracts Act [Chapter 8:03]?

[25 marks]

QUESTION 2

With the aid of an illustration explain the following forms of delivery under a contrary of sale?

- | | | |
|----|---|------------------|
| a) | <i>Traditio longa manu</i> (delivery by the long hand) | [5 marks] |
| b) | <i>Traditio brevi manu</i> (delivery by the short hand) | [5 marks] |
| c) | <i>Constitutum possessorium</i> | [5 marks] |
| d) | Symbolic delivery, and | [5 marks] |
| e) | Attornment. | [5 marks] |

QUESTION 3

- | | | |
|----|--|-------------------|
| a) | Briefly outline the following: | |
| | i) The duties of a lessor under a contract of lease | [5 marks] |
| | ii) The duties of a lessee under a contract of lease | [5 marks] |
| b) | What is meant by the term “landlord’s <i>tacit hypotheec</i> ” and how is it effected? | [15 marks] |

QUESTION 4

- a) What are the essentials of an insurance contract? **[10 marks]**
- b) Explain the following terms under a contract of insurance?
- i) Subrogation **[5 marks]**
 - ii] Assignment **[5 marks]**
 - iii] Warranty **[5 marks]**

SECTION B

QUESTION 5

Robert owned a timber processing factory. He subsequently formed a private limited Company where he is the only shareholder. Before he sold the timber-processing factory to the company the timber had been insured in his own name. After the sale of the timber factory, the timber was gutted by fire. Robert has lodged a claim with his insurance company.

- a) With the aid of case law authority, explain whether the Insurance Company is liable in the circumstances? **[15 marks]**
- b) Why is it important that someone must have an “insurable interest” in the thing insured under the Zimbabwean law of insurance? **[10 marks]**

QUESTION 6

A enters into an agreement with B whereby B has agreed to buy A's pedigree bull. B has good knowledge of A's herd and B accepted the description of the bull he was buying in the absence of the bull. Later on, when A has received the purchase price, he calls B and points out the bull to B and declares "look at him, he is now all yours". B acknowledges this with a smile.

The bull remains in A's herd and is struck and killed by lightning within forty-eight hours of A's pointing out.

B writes to A demanding the re-imbusement of the purchase price or delivery of a similar bull.

- a) Explain the effect of delivery under a contract of sale? **[5 marks]**
- b) Explain the mode of delivery that was used by A in this case? With an aid of any explanation, describe two other forms of delivery? **[5 marks]**
- c) Is A liable to return the purchase price or to delivery a similar bull to B. Would your answer be different if B was not aware of the exact bull and none was pointed out to him? **[5 marks]**

QUESTION 7

A has been a proud owner of a BMW for sometime. Six months ago A was involved in an accident and sent to it to Know It All Car Clinic. The BMW is attended to and also panelbeaten. The senior mechanic delivers the BMW to A and says;

"Here is your babe. She is just as new. But hey! Seems to me the engine cracked. The chasis has trouble too. If I were you I would sell it tomorrow because she will be all trouble in no time, but for the time being nobody can tell."

A sells the BMW to B "*voetstoots*" and conceals that there could be damages to the engine and chasis. The BMW is sold for \$800 million. A pays a deposit of \$500 million and promises to pay the balance after sixty days. A discovers the defects. He sends the BMW for repairs and is charged \$300 million.

B refuses to pay the balance on the basis that he has an "*actio quanti minoris*" remedy. A is puzzled by all this and approaches you to explain the meaning of "*Actio quanti minoris*".

- a) Explain to A what the "*actio quanti minoris*" remedy is and advise whether it is applicable in the present scenerio? **[15 marks]**
- b) A insists to sue B to recover the balance of the purchase price. Advice A on his chances of success? **[10 marks]**

QUESTION 8

- a) Briefly explain the legal effect of delivery in a contract of sale? **[5 marks]**
- b) In an agreement of sale X and Y agree on 1 September that X is to deliver a horse to Y. Discuss the position where:
- i) the agreement was that X was to deliver the horse on 15 September against payment of \$50 million and the horse is killed by lightning on 5 September? **[5 marks]**
- ii) the agreement was that X was to deliver the horse on 15 September against payment of \$ 50 million and the horse dies of starvation on 5 September? **[5 marks]**
- iii) the agreement was that X was to deliver the horse on 15 September against delivery of a bull by Y and the horse is killed by lightning on 5 September? **[5 marks]**
- iv) the agreement was that X was to deliver the horse on 15 September, against delivery of one of Y's four bullocks which Y's wife would select on 10 September and all the four bullocks are killed by lightning on 5 September? **[5 marks]**

******* END OF EXAMINATION *******