

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

**COMMERCIAL LAW II - CIN 1204**

**JULY 2006 SUPPLEMENTARY EXAMINATION**

**DURATION: 3 HOURS**

Instructions to Candidates

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

**QUESTION 1**

- a) Explain the difference between a patent defect and a latent defect under a contract of sale?  

**[5 marks]**
  
- b) Explain the liability of the Seller in the event that there is a latent defect in the thing sold?  

**[5 marks]**
  
- c) Outline the meaning of the following remedies available to purchaser under a contract of sale.
  - i) *actio quanti minoris*
  - ii) *actio redhibitoria*  

**[5 marks]**
  
- d) Explain the meaning of a ‘*voetstoots*’ clause in a contract of sale and briefly discuss whether a seller can be protected by such a clause in the event of a fraudulent non-disclosure of a latent defect’  

**[10 marks]**

## **QUESTION 2**

- a) Explain the concept of agency. **[5 marks]**
- b) What is meant by “apparent authority” under the contract of agency? **[5 marks]**
- c) Discuss three ways in which a contract of agency may be terminated. **[5 marks]**
- d) Briefly discuss two situations where a principal can be bound by an agent’s action where an agent has acted outside the authority given to him by the principal. **[10 marks]**

## **QUESTION 3**

- a) Under the law of negotiable instruments what are the legal consequences of a forged signature? **[5 marks]**
- b) What is the effect of crossing a cheque and then adding the words “not transferable”? **[5 marks]**
- c) “A customer has a duty to draw a cheque in such a manner as not to facilitate fraud.” Discuss the extent of this duty and any liability that may arise from a failure to properly draw a cheque. You may use case law authority to illustrate your answer. **[15 marks]**

#### **QUESTION 4**

- a) Explain the historical development of the concept of insurable interest and its applicability under the Zimbabwean law of insurance.

**[25 marks]**

#### **SECTION B**

#### **QUESTION 5**

- a) X leases his flat to Y. The rent has to be paid at the end of each month. Y fails to pay the rent. The flat is not subject to rent control. X approaches you for advice. Explain the legal position.

**[5 marks]**

- b) In a sale agreement 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 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]**

### **QUESTION 6**

- (a) X purchases a second hand Mazda 626 from Y, a dealer, for investment purposes for \$250 million after seeing the vehicle in Y's showroom. X tells Y that he is purchasing the car for investment purposes. Six months later X has the vehicle serviced by another dealer who subsequently informs X that the entire chassis of the vehicle is not a true Mazda 626 part but rather another vehicle's chassis that was grafted onto a Mazda 626 body, possibly after an accident. This renders the car worth \$100 million less than X paid for it. Advise X as to the remedy(ies) at his disposal.

**[15 marks]**

- (b) Write short notes on:

- (i) The tenant's position regarding improvements to the leased property.  
**[5 marks]**
- (ii) Remission of rent.  
**[5 marks]**

### **QUESTION 7**

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 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 8**

George is an agent for ZIMLOT Insurance Company who has been given authority to grant cover on behalf of the Company for all houses other than houses built under Operation Garikai These must be referred to Head Office for Approval. David is granted cover for an Operation Garikai property. David is not aware of the extent of George's authority. Three months later the property burns down. Zimlot refuses to pay on the basis that the insurance is invalid because George had no authority to put them on cover.

- a) Advise David on his legal rights, if any.

**[15 marks]**

- b) Would your advice be different if David was aware that George had no authority to grant cover for his property?

**[10 marks]**

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