

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

BACHELOR OF COMMERCE (HONS) DEGREE

COMMERCIAL LAW II [CIN 1204]

SECOND SEMESTER FINAL EXAMINATION– AUGUST 2009

Duration

3 hours

Instructions to Candidate

Answer any 4 questions

Question 1

- (a) Distinguish between indemnity insurance and non indemnity insurance. (4)
- (b) What are the four essentials of an insurance contract? (4)
- (c) An insurance contract is the same as a wager. Do you agree? (5)
- (d) Webster considers himself to be a very clever person and decides to take out insurance to cover his Isuzu double cab for USD20,000.00. He is subsequently involved in an accident with a negligent 3rd party and the car is damaged beyond repair. Advise Webster given the following scenarios:
- (i) Webster has been paid USD20,000.00 by the negligent 3rd party and now wishes to make a claim on his insurer. (4)
- (ii) Webster had insured with 5 different insurers and now wishes to have a fleet of Isuzu double cabs for a car rental business during the world cup by claiming USD20,000.00 from each of the insurers. (6)
- (e) Define the term insurable interest. (2)

Total 25

Question 2

- (a) State the seven types of dismissals that constitute automatically unfair dismissals in a contract of employment. (6)
- (b) What is franchising? (2)
- (c) Discuss the duties of both parties in a franchising agreement. (12)
- (d) Mr Knowitall an entrepreneur from Bulawayo enters into an agency contract with Mr Cool an expert in sourcing products like those sold by Mr Knowitall. The agency agreement is valid and its period of operation is listed to the period 1 to 5 April. Mr Cool fulfills all his obligations and is paid his remuneration and all the commission from Mr Knowitall as per arrangement. As a result of Mr Cool's effort it seems many more potential customers have sought Mr Knowitall's products after the 5th of April. Advise Mr Cool as to whether he can claim commission for sales made after the 5th of April. (5)

Total 25

Question 3

Mr Bean is and he has been for the past 30 years, an established fabric manufacturer in Bulawayo. On 15 March 2009 an old school friend from Harare, Mr Dick calls him. During that telephone conversation Mr Bean requests Mr Dick to obtain information for him about a new pleating machine produced by a Mr S in Harare. Mr Bean tells Mr Dick in passing that he may be interested in purchasing the machine if its price was in the region of USD30,000.00. Mr Dick obtains all the details about the machine but prior to its dispatch, Mr Dick visits Mr S and to his

surprise Mr S offers him the machine for USD5,000.00. Professing to act as Mr Bean's agent, Mr Dick purchases the machine on his behalf from Mr S. One day later Mr Dick realises he has no contract of agency with Mr Bean, nor did the later authorise him to purchase the machine.

In examining the facts, advise Mr Dick as to the essential requirements for a valid ratification of his contract with Mr S by Mr Bean. (25)

Total 25

Question 4

- (a) What are the remedies for unfair dismissal? (3)
- (b) Discuss the rights of both parties in a contract of lease. (14)
- (c) Give 5 examples of terms that may be considered to be unfair in a credit agreement. (5)
- (d) What measures are there under the credit act to protect consumers from overspending? (3)

Total 25

Question 5

- (a) Explain how an agency by estoppel is created. (5)
- (b) Outline the duties of the employee in a contract of employment. (10)
- (c) Define the maxim 'huur gaat voor koop' and outline the burden it places on the purchaser of a property with an existing lease agreement. (7)
- (d) Discuss the doctrine of utmost good faith under a contract of insurance. (3)

Total 25

Question 6

- (a) Define the term vicarious liability and discuss the prerequisites for an employer to become vicariously liable. (5)
- (b) What is a hypothec and when does it come into being? (3)
- (c) Define the term arbitration. (2)
- (d) Chronicle matters that may not be referred to arbitration. (4)
- (e) Explain in detail the four ways which may lead to the establishment of an agency relationship. (11)

Total 25

END OF EXAMINATION