

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF INSURANCE AND ACTUARIAL SCIENCE

BACHELOR OF COMMERCE HONOURS

COMMERCIAL LAW II [CIN 1204]

MAY /JUNE 2011 EXAMINATION

3 HOURS (100 MARKS)

INSTRUCTIONS

Answer any FOUR questions. Each question carries 25 Marks. Substantiate your answers with reference to authority wherever possible. Write clearly and legibly. Begin each question on a fresh sheet of paper.

QUESTION 1

a] Discuss essentials of a valid contract of sale [7]

b] S sees a car advertised for sale by T at \$10 000. After work, he visits T and it is agreed that he will buy the car. S says that he will bring the money the next day and collect the car at the same time. T agrees. That evening as always, T locks the car in the garage. Overnight it is stolen and next day, S arrives to be told what has happened. He is about to go when, to his surprise, T abruptly says, "Mr S, what about my money"? Advise S.

[8]

c] Would the situation change if T, since he expected it to be collected first thing in the morning, had on this occasion simply left the car locked and parked in the street? [5]

d] Is there anything that S could have done to cover himself against the eventualities described?

[5]

QUESTION 2

a] Z Buys six cows for the total of \$3000 from "Cattle Sales Ltd". The cattle are to all outward appearances in excellent health. In fact, one is in the early stages of lung sickness. If at the date of sale a thorough veterinary inspection had been carried out, the existence of the lung sickness would probably have been revealed. This was not done, however, the cattle are delivered to Z's Farm. Shortly thereafter, the ailing cow dies of the lung sickness, followed by the other five

cows and then the rest of Z's heard which is worth \$25 000. Advise Z as to his remedies, if any against "cattle sales Ltd" [8]

b) Would the situation be any different if a veterinary surgeon, acting for Z, had inspected the cow, but failed to detect the lung sickness due to its early stage? [5]

c) How would Z's position be affected if the disease involved had not been lung sickness but a fatal skin disease which was not obvious because of the animal's thick hair? [5]

d) Briefly explain what a buyer can do when eviction is imminent? [7]

QUESTION 3

a) Mr Ncube had to deliver parcels with his company vehicle and afterwards return to the work premises. After delivery however, he deviated from his route to a place where he drank alcohol. He caused an accident on his way back and killed the plaintiff's breadwinner in the process.

Assess and conclude this situation with regard to liability, giving advice to Mr Ncube, the plaintiff and Ncube's employer, with reference to decided cases. [20]

b) List five statutory duties of the employer [5]

QUESTION 4

a) Define a contract of lease and briefly discuss duties of the lessor. [9]

b) Tulani is the owner of a farm which he inherited from his father. Tulani does not live on the farm and in order to maintain the farm and ensure that he receives an income from it, he leases the farm to Josiah for \$2000 per month for an initial period of two years which is renewable by agreement between Tulani and Josiah. Nine months after the two parties had concluded the contract, Tulani is killed in a motor car accident and his daughter Gina inherits the farm from her father. Gina is keen to farm the land herself and comes to you for advice on whether she can terminate the contract of lease which Tulani entered with Josiah.

Advise Gina and Josiah with regard to the above scenario [8]

c) Discuss landlord's tacit hypothec. [8]

QUESTION 5

a) Explain in detail the five sources which may lead to the establishment of an agency relationship. [10]

b) Discuss the duties of an agent giving relevant examples in each. [15]

QUESTION 6

a) Michael completes an application form for life assurance which asks the question “has any insurance company ever refused to cover you?” In fact many years ago as a motorcyclist, who had bought a high powered motorcycle, cover had been refused. Michael does not answer the question, leaving the space blank.

Despite this, a premium is agreed and paid for several years. When Michael is killed in a road accident, the insurance company refuses to pay claiming misrepresentation.

Advise Michael’s wife, the beneficiary, including a discussion on the main objectives of taking out insurance cover. [15]

b) Discuss the principles of subrogation and Multiple insurance [10]

*****good luck*****