

**NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY  
FACULTY OF ARCHITECTURE AND QUANTITY SURVEYING  
BACHELOR OF QUANTITY SURVEYING (HONOURS) DEGREE  
PART I FIRST SEMESTER EXAMINATIONS – DECEMBER 2004**

**LAW: CONSTRUCTION & ENGINEERING II – AQS 2106**

**TIME:** 3 Hours

**TOTAL MARKS:** 100

**INSTRUCTIONS:**

Answer **4** questions.

**QUESTION 1**

- a) Typical of the English language, *tender* has several disparate meanings. In Law, what is a *tender*? (5 marks)
- b) The content of a set of tender documents will vary considerably from project to project depending on the degree of complexity. Generally, what do they consist of? (20 marks)

**QUESTION 2**

- (a) What is “arbitration?” (5 marks)
- (b) Why do construction professionals prefer *arbitration* instead of *litigation* in times of disputes? (5 marks)
- (c) With the aid of Case Law, how binding is the arbitrator’s decision? (15 marks)

**QUESTION 3**

Where materials and plants are supplied by the employer, he retains the ownership thereof throughout the period of building operations. Where materials and plant are supplied by the builder, he may lose ownership thereof in one of two ways, either by accession (*accessio* or *inaedificatio*) or by delivery (*traditio*)

Discuss the above, making particular reference to the vesting of materials and plant.

#### **QUESTION 4**

- (a) According to the Conventional Penalties Act 1962, what is the definition of “*Penalty*”? (5 marks)
- (b) According to common law, what is meant by “Penalty”? (5 marks)
- (c) In deciding whether a clause embodies a penalty or a pre-estimate of damages, what does the court consider? (15 marks)

#### **QUESTION 5**

Many people complain that they are confused by legal terminology.

Please give brief definitions of the following:

- (a) “Civil” law & “Criminal” Law (3 marks)
- (b) Civil summons (3 marks)
- (c) Substituted service (2 marks)
- (d) Edictal citation (2 marks)
- (e) Default judgement (2 marks)
- (f) Provisional sentence (3 marks)
- (g) Subpoena (1 mark)
- (h) Subpoena duces tecum (1 mark)
- (i) Sine Die (1 mark)
- (j) Discovery (1 mark)
- (k) Res judicata (2 marks)
- (l) Absolution from the instance (2 marks)
- (m) Applications (2 marks)

**END OF EXAMINATION**