



***"Investing in Africa's Future"***

**FACULTY OF MANAGEMENT AND ADMINISTRATION**

**COURSE TITLE: MMS 203 – BUSINESS LAW (PARALEL-HARARE)**  
**SEMESTER 1: FINAL EXAMINATION OCTOBER 2014**  
**LECTURER: MR. T MASIIWA**  
**TIME: 3 HOURS**

---

***INSTRUCTIONS***

Answer **all** questions in this paper.

Start **each** question on a new page in your answer booklet.

Reads and understand the question before attempting it. Also take note of the mark allocation in answering the questions.

The marks allocated to **each** question are shown at the end of the section.

Credit will be awarded for logical, systematic and neat presentations.

### **Question 1**

- a) Write a short definition and include an example if possible to show understanding of the following:
- |      |                                 |          |
|------|---------------------------------|----------|
| i)   | Main sources of law in Zimbabwe | 10 marks |
| ii)  | Civil and criminal law          | 2 marks  |
| iii) | <i>Ratio decidendi</i>          | 2 marks  |
- b) Distinguish between a binding precedent and a persuasive precedent. 4 marks
- c) Highlight the any two forms of Alternative dispute resolutions 2 marks

### **Question 2**

- a) TMA (Pvt) Ltd was set to open a new supermarket on 1 May 2014. In order to stock the supermarket and to have a grand opening, they entered into various contracts with suppliers etc.

One such contract was entered into on 15 April 2014 with KAZI, the local meat supplier, for the delivery of a large consignment of frozen turkeys. TMA explained to KAZI that they planned to sell the turkeys at a very special price as a part of their drive to attract customers to their shop on opening day.

TMA also entered into a contract with SAM, for the supply of a large consignment of canned fruit on 16 April. No date was specified for delivery and TMA paid for the consignment straight away and told SAM to deliver as soon as possible.

TMA also entered into another contract with a group of actors called “The Turkeys” who were contracted to arrive at the supermarket, on opening day, dressed in turkey outfits. They were required to promote the turkey special running around the supermarket acting like turkeys, which included giving customers’ small children turkey-rides. The Turkeys were concerned that the previous engagements had been cancelled at the last minute but TMA guaranteed the actors that their services would be required on the day ‘no matter what’.

On the opening day TMA discovered that the two consignments of goods mentioned above, which was to be a special feature of the opening, had not been delivered. These items had been included in their advert placed in a local press. KAZI telephoned TMA that morning to say that the Government had banned the supply of frozen turkeys due to a recent outbreak of bird flu in Zimbabwe.

SAM on the other hand was surprised to hear that they were late in delivery, as they claimed that they did not know of the urgency of delivery on 1 May. They could only deliver on 6 May to which TMA responded that they demanded performance within 7 hours or else they would cancel the contract with SAM. Delivery did not take place.

When “The Turkeys” arrived at the supermarket ready to perform, they were informed that their services were no longer required as the turkey theme would have to be scrapped. The Turkeys were upset especially since they had turned down other jobs to be at the supermarket on the day. They also had to hire costumes for the event. TMA alleged that this was not their problem as the change of theme was beyond their control. Just as the Turkeys were leaving the supermarket, a kind old magogo approached them and offered to pay the turkeys half of what the supermarket would have paid them if they came with her to her grandson’s birthday party. The Turkeys refused the offer feeling that they could rather claim the whole amount owed from TMA (Pvt) Ltd.

- (i) Advise TMA (Pvt) Ltd on whether it has any legal remedy against KAZI and SAM. 4 Marks
  - (ii) Would TMA (Pvt) Ltd be liable to any customers that have responded to the advert? Briefly explain your answer. 2 marks
  - (iii) Could TMA legally avoid payment of the “The Turkeys” who had arrived on time dressed in their turkey outfits? 3 marks
- b) Briefly explain undue influence in relation to its meaning and elements. 5 marks
  - c) State and discuss the 3 general types of remedies available in the event of a breach of contract. 6 Marks

### **Question3**

- a) ‘[T]he word ‘sale’ is used with various meanings. To lawyers discussing it from an academic point of view it means the time when the parties have arrived at a valid and binding agreement, *Nimmo v Klinkenberg Estates Co Ltd* 1904 TH 310 at 314. Outline and explain the elements that make a contract of sale valid. 6 marks
- b) A and B negotiate for the sale by A to B for five heads of cattle. A invites B to his farm where he points out the five heads of cattle one by one to B. B says he will send an employee of his to remove the cattle at a later time.
  - i. Name the method of delivery used in the above scenario. 2 marks
  - ii. State the other methods of delivery under a contract of sale. 5 marks
- c) Write short notes on *Aedilition* remedies available to the purchaser under the contract of sale. 5 marks
- d) Outline any two obligations of the seller and any two obligations of the buyer in a contract of sale 2 marks

#### **Question4**

- a) State the legal test for insolvency 2 marks
- b) The applicant for voluntary surrender must satisfy the court of the (four) requirements required. Give the requirements and briefly explain each one. 4 marks
- c) Describe any 4 actions that have been designated by the legislature as 'acts of insolvency' in terms of the Insolvency Act. **[4 marks]** In the course of your answer, explain whether an act of insolvency is committed in the following cases.
  - (i) The debtor writes to the creditor: 'I am reluctant to settle your account immediately, because this would land me in financial difficulty. I would be grateful if you could give me an extension of a few months to allow me to consolidate my position.' 1 marks
  - (ii) The debtor writes to the creditor: 'I do not intend to dispute liability in this matter, but I am only prepared to offer you half of what you are claiming. This offer is made in full settlement of your claim.' 1 mark
  - (iii) The debtor has moved from Johannesburg to Cape Town for six months now, without informing any of his creditors. In addition, he has cancelled the lease on the flat he was occupying in Johannesburg prior to his departure. 1 mark
  - (iv) A return of service on a warrant of execution issued against the debtor states that the sheriff has, after a diligent search, failed to find sufficient disposable property belonging to the debtor to satisfy the judgment against him. 1 mark
- d) Outline any four instances when an insolvent can be rehabilitated. 2 marks
- e) Outline the effects of rehabilitation on the insolvent. 4 marks

#### **Question 5**

- a) State the essential elements one needs to establish for a valid principal agent relationship to exist. 4 marks
- b) The effect of ratification is to make the principal liable for the agent's unauthorized action; just as if the agent had possessed authority at the time he took the action. Outline the requirements to be satisfied for ratification by principal to be valid. 4 marks
- c) What is the difference between implied and express authority in agency, 4 marks
- d) To create the relationship of agency between the principal and the agent, authority has to be given to the agent by the principal. Identify the various sources of authority, i.e. the ways in which agency may arise. 4 marks
- e) " An estate agent is sometimes said not to be an agent at all as he does not conclude a contract on behalf of his principal and does not undertake a mandate ... but he is treated as an agent for some purposes"

State and comment any four types of agents that you know

4 marks