



"Investing in Africa's Future"

FACULTY OF MANAGEMENT AND ADMINISTRATION

COURSE TITLE: MMS 512 BUSINESS LAW AND ETHICS

MODULE 6: FINAL EXAMINATION NOVEMBER 2013

LECTURER: MR MASIYIWA

TIME: 3 HOURS

INSTRUCTIONS

Candidates should attempt **all** questions and should begin each answer on a new page.

In marking papers, examiners take into account clarity of exposition, effective arrangement, and presentation.

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

Question 1.

- a. Set out and explain the main sources of law in Zimbabwe. **10 marks**
- b. State the two broad categories of courts in Zimbabwe **2 marks**
- c. Outline any four forms of dispute resolutions in Zimbabwe **4 marks**
- c. Give any three bases for a review and two bases for an appeal. **5 marks**
- d. With reference to examples, explain the distinction between *Ratio Decidendi* and *Obiter Dicta*. **4 marks**

Question 2.

- a. *"Assuming that all the essentials of a contract are present in the agreement, there may nevertheless be some cause, reason or flaw existing at the time of the agreement which entitles one of the parties to cancel the contract and to claim that both parties be restored, where possible, to their original position."*

Analyse and discuss the above statement in relation to the law of contract.10 marks

- b. On 2 January 2003 Madhiri wrote to Pfumai offering to sell him his rare painting for \$2 000·00 adding that he had to know of Pfumai's decision by 31 November 2013. On 10 January 2003 Pfumai replied that he did not think the painting was worth \$250 000·00 but would be prepared to pay \$200 000·00 for it. On 15 January 2003 Madhiri replied that he would not accept less than \$250 000·00 for his painting and on 16 January 2003 Madhiri sold the same painting to Shasha for \$300 000·00. On 28 January 2003 Pfumai decided to pay \$250 000·00 for the painting after all and wrote to Madhiri to that effect enclosing a bank cheque for that amount in favour of Madhiri. Madhiri returned the cheque to Pfumai politely informing him that the painting had already been sold to a third party. Upon hearing this Pfumai became very upset and threatened to sue Madhiri for breach of contract.

You are required to advise Madhiri of his position should Pfumai choose to sue him for either specific performance of the contract; or damages for breach of contract.

7 marks

Question 3.

- a. Define the concept of insolvency and state the instances where an act of insolvency is committed, **5 marks**
- b. *"Where a person has been declared insolvent, ownership of the spouse's property also vests in the Master of the High Court. The intention is to prevent an insolvent from alienating or putting out of reach of creditors, some of his property and passing it to his wife."*

Clearly outline what the spouse should prove in order for the trustee to release any property he has attached. **5 marks**
- c. State and explain the position of the insolvency Act chapter (6:04) on the following:
 - i. Undue preference. **2 marks**
 - ii. Collusive dealings. **3 marks**
- d. In terms of the Insolvency Act (Chapter 6.04) explain the meaning of the word rehabilitation and its legal effect. **5 marks**
- e. The insolvent is not released from the status of insolvency unless and until they have been rehabilitated. Outline the circumstance in which an insolvent may apply for rehabilitation. **5 marks**

Question 4.

- a. In relation to the law of agency, discuss the statement that in cases of ratification, agency of necessity, and agency by way of apparent authority or estoppel, there is no proper relationship of agent and principal. **8 marks**
- b. Briefly explain the meaning of the following terms which are associated with the law of agency.
 - (i) Broker. **2 marks**
 - (ii) Auctioneer. **2 marks**
 - (iii) *Del credere* agent. **2 marks**
 - (iv) *Negotiorum gestor*. **4 marks**
- c. Outline any 5 ways on how a contract of agency terminates. **5 marks**