



"Investing in Africa's Future"

FACULTY OF MANAGEMENT AND ADMINISTRATION

BUSINESS LAW -MMS 203

END OF SEMESTER EXAMINATIONS

APRIL 2017

LECTURER: (MR T. MASIIWA)

DURATION:(3 HRS)

INSTRUCTIONS

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

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

 3. The marks allocated to each question are shown at the end of the question.
-

Question 1

- a. "Law must be fair, just and morally acceptable" do you agree? Justify your answer. 4 marks
- b. For each of the following statements, write true or false and explain your answer:
- i. No superior court is bound by its own previous decision 3 marks
- ii. Court are only permitted to refer to an authoritative text as a source of law where the author has knowledge of Roman-Dutch law 3 marks
- iii. Both *ratio decidendi* and *obiter dictum* are important for future cases 3marks
- c. There are a number of important distinguishing features between civil and criminal law. Analyse any four differences that exist. 3marks
- d. Briefly explain the four requirements to be satisfied for a custom to be regarded as valid at law. 4marks

Question 2

- a. Lizzie who is aged 17 years enters an apprenticeship agreement with Clive's pies Pvt Ltd. She is training to be a baker. The apprenticeship is to last one year. During that time she will learn all aspects of bread making. She is given an allowance of \$30 per week, free accommodation and meals. She must work 10 hours a day, 6 days a week and must get permission from her employer if she wishes to go out at night. She decides to leave the apprenticeship. The owners of Clive's pies Pvt Ltd are angry and want to sue Lizzie for breach of contract. Advise Clive's pies Pvt Ltd. 2 marks
- b. Sally while walking past K-Mart spotted a dress in the window priced at \$9. She walked into the shop and intended to buy the dress. The shop assistant told her it was a mistake. The price should be \$90. Advice Sally of her rights. 4 marks
- c. Consider the legal implications, emphasizing differences if any of the following separate situations.
- i. A Ship is drifting in the Mozambique Channel with a broken propeller shaft. A tug offers to tow the vessel to safety for \$10 000, an amount which the captain of the stricken ship knows to be grossly excessive. For

some considerable time, the captain refuses the offer, but then, as the ship drifts ever closer to shore, he eventually accepts the tug's services at the stated cost. Is he bound? And why. 6 marks

- ii. C buys 500 sacks of potatoes at \$17 per sack on 12 August 2013. In terms of the contract, delivery is to be made by 19 August 2013. D, the seller fails to deliver. There is no communication from D and finally on 21 November 2013, C buys alternative stock on the open market where, due to crop failure, the price of potatoes per sack was now \$40. C brings an action against D for breach of contract and claims damages of \$11 500 representing the difference between the August and November prices on 500 sacks. Will C succeed in his action and why? 3 marks

- d. Mary is a designer and maker of wedding dresses. In February, she was approached by Boris, who asked her if she would make a wedding dress for his daughter, Sophia's, wedding. In March, Mary had further discussions with Boris and with Sophia, who stipulated that they required particular silk fabrics and lace that could only be obtained from Italy. Mary pointed out that the materials in question were both unusual and very expensive. Boris responded that the cost was unimportant and that he wanted Sophia to have the dress she wanted for her wedding. Mary and Boris then entered into a contract which provided that Mary would design and make a wedding dress to the requirements stipulated by Boris and Sophia for Sophia's wedding on 10th October. The price agreed was £10,000. Boris paid Mary a deposit of £4,000. Mary obtained the fabrics and designed and made the dress. An appointment was made with Sophia for the afternoon of 25th September for a final fitting of the dress. On the morning of 25th September, Boris telephoned Mary to say that Sophia's fiancé had been killed in a car accident and so there would be no wedding. Therefore, the dress was no longer required. Mary is now demanding that Boris pay the balance of the full contract price for the dress. Boris is refusing to pay and is demanding the return of his deposit. Advise Mary. 4 marks

Question 3.

- a. Jane sells her motor car to Shona for \$10 000. To Shona it looks as if the car is in mint condition. Shona pays the full purchase price immediately. Advise Shona on her legal position in the following separate situations:
- i. They agree that Jane will keep the car for another week while Shona has a garage built for it at his house. One night during the week Jane forgets to lock the car in her garage. That night there is a hail storm and the paint work on the car is damaged. 2 marks
- ii. A week after Shona has taken delivery of the car, it breaks down. It then transpires that the car had been damaged in an accident before, and that

it had not been repaired properly. It will cost Shona about \$ 25 00 to have the engine fixed. 2 marks

iii. Would your answer be different in question (ii) if the sale had been 'voetstoots'? 3 marks

iv. Would your answer in question (ii) be any different if Jane had told Shona that the car was in mint condition and that it had never been involved in an accident, when she knew that it had been in an accident and that it had not been properly repaired? 3 marks

v. Would your answer in question (ii) be any different if Jane had expressly warranted (guaranteed) to Shona that the car had never been involved in an accident? 2 marks

b. Mandy bought an antique oak coffee table from Suzie. Soon thereafter she hired a carpenter to clean and varnish it for her. Five months later a guest, who was visiting her, recognised the coffee table as her own. She stated that it had disappeared from her home when her house was robbed in June 2008. Mandy is prepared to hand the coffee table over to the guest, but her sister insists on obtaining legal advice. Mandy then approaches you for advice. Advise Mandy. 4 marks

c. Olivia buys two Labradors from Mr Beer, who is a Labrador breeder. Olivia is determined that she only wants pedigreed Labradors, and specifically asks Mr Beer if the two Labradors are pedigreed. Mr Beer is new to the business of dog-breeding, and is not actually sure of whether the puppies are pedigreed. The two puppies Olivia bought were part of a litter that were simply abandoned on the side of the road, and found by Mr Beer. Nevertheless, not wanting to lose the sale, Mr Beer assured Olivia that the two puppies are true pedigreed Labradors. The cost of each puppy is \$300,00. Two months after buying the puppies, Olivia discovers to her dismay that the puppies are not pedigreed. By that stage, however, Olivia has fallen in love with the puppies and is not sure that she can bear to part with them. The actual value of a non-pedigreed puppy is \$50 each at most. Olivia tells you that she would never have bought the puppies had she known they were not pedigreed. Olivia is your friend and tells you she would like to take legal action against Mr Beer. Advise Olivia on the basis upon which she may proceed against Mr De Beer and explain the chances of success. 2 marks

Question 4.

a. State the legal test for insolvency 2 marks

- b. The applicant for voluntary surrender must satisfy the court of the (three) requirements required. Give the requirements and briefly explain each one of them. 3 marks
- c. Write a note in which you describe any four categories of person who are disqualified from appointment as trustee of an insolvent estate. 4 marks
- d. Describe any 4 actions that have been designated by the legislature as 'acts of insolvency' in terms of the Insolvency Act. 4 marks
- e. 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 Harare to Bulawayo for six months now, without informing any of his creditors. In addition, he has cancelled the lease on the flat he was occupying in Harare 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
- f. Outline any three effects of rehabilitation on the insolvent. 3 marks

Question 5

- a. Explain how agency may be created. 4 marks
- b. Describe the different kinds of agents and the scope of their authority. 10 marks
- c. Mukundi appoints Tinashe as her agent to buy furniture and to sell it to her trade customers. She informs her suppliers and customers of Tinashe's appointment. Mukundi tells Tinashe that he is not to buy any red sofas as she doesn't think they are good sellers. Unbeknown to Mukundi, Tinashe is a thief and has recently served a term of imprisonment for dishonesty. Tinashe visits Sofas Ltd,

one of Mukundi's main suppliers and, purporting to act for Mukundi, agrees to purchase 20 red sofas for \$1,500. In fact, Tinashe knows that he can sell these sofas to his friend Devine for \$2,000 and keep the profit for himself. The following day, Tinashe enters into an agreement with Devine to sell the sofas for \$2,000 without telling Devine that he is Mukundi's agent. Shortly afterwards, Sofas Ltd find out what Tinashe was up to and tells Mukundi that they will not honour the agreement to sell the red sofas. Fearing a loss of business, Mukundi then purports to ratify the purchase with Sofas Ltd as well as the sale to Devine. Advise the parties.

6 marks

- d. The conditions that must be met before a principal can ratify an agent's actions.

5 marks

END OF PAPER TOTAL 100