



**A F R I C A
U N I V E R S I T Y**

(A United Methodist-Related Institution)
INVESTING IN AFRICA'S FUTURE

FACULTY OF EDUCATION

FIRST SESSION 2011 SUPPLEMENTARY EXAMINATION QUESTION PAPER

COURSE CODE	MMS 203
COURSE TITLE	BUSINESS LAW
GROUP	B Ed GROUP 1
EXAMINER	MR. MUNGUMA
DATE	DECEMBER, 2011
DURATION	3 Hours
INSTRUCTIONS	<ol style="list-style-type: none">1. Answer four (4) questions. You must answer all questions from section A and C and any two (2) questions from section B2. Start each question on a new page. The marks allocated to each question are shown at the end of the question.

SECTION A.

- 1 a) What does the term *contro bonos mores* mean? [1]
- b) Explain with the aid of examples constructive delivery in law [2]
- c) Differentiate between novation and compromise. [6]
- d) What does the term *actio quanti minoris* mean in law? [2]
- e) What does the term contractual capacity mean? [1]
- f) What is impossibility of performance [1]? Explain three ways that may cause that? [2]
- g) State 3 duties of the insured and explain the remedy available to the insurer for breach of each duty. [10]

SECTION B

- 2. List and explain four [4] duties of an employee in a contract of employment. [8]

- b) "Employees are given fundamental rights by the Labour Act" explain four fundamental rights of employees in Zimbabwe. [8]
- c) What is the duty of disclosure in Insurance law? [9]

3 a) "Judicial precedents are never a source of law in any legal system. The role of a judge is not to make the law but to interpret it. In purporting to make the law the judge will be exceeding his powers as the third arm of government." Explain the correctness or otherwise of this statement. [15]

- b) After the death of your spouse your in laws out of spite have not co-operated with you to distribute his/her effects the customary way. Culturally it is taboo to move on with your life if the personal effects of the late spouse are still within your custody and control especially in the same household. You intend to move on (by remarrying). After the customary period of mourning is over you try to contact the in laws to no avail. The presence of the effects is being a stumbling block to you. Do you have a remedy enforceable through the legal system to deal with the distribution of the effects of the deceased spouse? [5]
- c) Distinguish between useful and luxurious improvements in the law of lease? [3]
- d) Define tacit emancipation? [2]

4. Smart entered into a contract to supply the government of Zimbabwe with fuel. Smart is South African but the contract was signed at Harare. Smart has always bought his fuel from Iran. The government of Zimbabwe is aware that the fuel is to be procured from Iran. Unknown to both parties at the time of the negotiations there is civil strife in Iran that led to the bombardment of oil refineries and their subsequent closure. In fact, the major company that he dealt with was bombed by a rocket and all wells went on fire. When Smart places his order with the said company he is advised for the first time that the company can not sale him the product at the moment because of the civil strife. In panic Smart approaches the next Iranian company but is met with the same result. At the same time Zimbabwe is running dry in terms of fuel supplies. Under pressure from the government the minister who signed the contract is threatening Smart with arrest for being 'a fraud and a fly by night supplier'. Smart approaches you in desperation for advice. Advise him on the following issues;

- a) Can he be arrested by the police for failing to deliver the fuel? Why do you say so? [4]
- b) Which country's laws apply to the contract between Smart and Zimbabwe? [3]
- c) Can Smart avoid his obligation to supply the fuel on the facts given? [12]
- d) If Smart had been paid in advance what happens to the money already paid to him? [6]

SECTION C

5. You buy a car from T who had advertised it in the press. You inspect the car by looking at the tyres, paint work, the exhaust, the suspension, the interior and the engine. The salesman tells you that the car is a "plane on four wheels" and has just received an engine overhaul. He tells you that for a car of that model it is the best you can ever find this side of the equator. You test drive it and you are satisfied with it. You pay the full price and take the vehicle with you. On your way home the car breaks down and you later learn that one of the pistons broke. It is discovered that the broken piston must have broken before because it has been welded. You approach T who is unwilling to help you in any way.

- a) What remedies do you have against T and why? [6]
- b) Does the fact that you inspected the vehicle before buying it work against you? What if after discovering the welded piston you had send it to a garage for purposes of new pistons to be fitted in the engine. You also buy new seat covers and have the car repainted. [6]
- c) Would your answer be any different if you had bought the car on a voetstoots basis from T.? [6]
- c) What form of a defect does the car in the above facts have? [2]
- d) How has the state intervened in contracts with penalty clauses? [5]

END OF PAPER