



SCHOOL OF LAW
NLLB105 LAW OF CONTRACT

END OF FIRST SEMESTER EXAMINATIONS

JAN/JUN 2024

LECTURER: C. MUNGUMA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Do NOT write your name on the answer sheet.
2. Answer any 2 questions from Section A and any 2 questions from section B.
3. Begin your answer for each question on a new page.
4. Credit is given for neat, logical and well written work.

Section A

Answer any two questions from this section.

Question 1

- a) Discuss with the aid of decided cases any one theory that explains the basis for recognising and respecting contracts in our law. [18marks]
- b) Explain the doctrine of privity of contract showing any exceptions to it. [7marks]

Question 2

Standard form agreements are generally treated as unfair by customers, clients and those with a weaker bargaining power in negotiating contracts. This feeling is stronger in the area of exemption clauses and limitation clauses. With the above view in mind explain how;

- i) the **courts** and [10marks]
- ii) the **legislature** have intervened in this field of law. [15marks]

Question 3

Explain at least three (3) remedies available to a party who has suffered a breach of contract. [18marks]

What is mitigation of damages? [7marks]

Section B

Answer any two questions from this section.

Question 4

The following terms appeared in a document titled terms and conditions in a contract of sale for electrical appliances and hardware:

- “6. The seller shall not be liable for *any returns or replacements* unless the faults or defects *are identified by the customer* in the shop before leaving the counter.
- 7. The seller does *not provide any guarantee or warranty* on the quality or serviceability of the goods sold and purchased herein.
- 8. The seller is not liable for any harm or injury that the purchaser may suffer as a result of using the product or item bought from the shop.”

Using your knowledge of the common law and statutory laws of Zimbabwe, will any of the above terms be binding on the following customers:

- i) One who buys a stove that stops working after a day’s use? [10marks]

- ii) One who is injured by chemicals which had no written instructions of how to use them. The customer having used the chemicals without gloves and a face mask while the type of chemicals required the use of a mask and gloves all the time. [10marks]
- iii) What does the contra- proferendum rule provide in Zimbabwean law? [5marks]

Question 5

RATL Co. is a small business dealing in exotic pottery and porcelain. The business is owned by Katie and Kelly and is run as a partnership from Mutare City. Of late business for the firm has been increasing and the partners want to employ a new accountant for the firm. RATL advertises in the press for the new position. John applies for the position and is called for an interview on Friday the 15th of January 2024.

After interviewing John, Katie and Kelly are very happy with John's performance in the interview as well as with his credentials. Katie who is the general manager for the firm advises John that he is the most suitable candidate that they had found. They ask John what is his position to accepting the job offer and John who is currently working in Victoria Falls, 800 kilometres from Mutare, asks for time to consider the proposal. John advised the two that he needed time to consider the proposal and would revert by Monday the next week after discussing the issue with his family. Katie and Kelly said nothing in response to this request and John does not press for a commitment on that. The three parted at that note.

After the interview, Katie and Kelly discuss the interview further and consider John's high qualifications as a potential stumbling block for employing him. They decide not to offer John the position. Katie immediately phones John and tells him that, they will not be considering him for appointment for the job. Unamused and deeply hurt John sends a letter demanding the job. He argued that RATL was committing an unfair labour practice by taking a job that they had given to him. He threatened litigation if the job was taken away from him.

- a) If John carries out his threat and sues RATL Co. partnership for a breach of contract and committing an unfair labour practice, would he succeed in his action? Advise him fully on his chances of success.

[15marks]

- b) During Covid 19 period, in 2021 Tonde who had visited a Changa province was caught by a lockdown order introduced in Changa 2 days after his visit. As a result he could not go back to his home province of Manica for 21 days. Tonde who was employed by Bata Shoe Company in Manica missed work for a total of 16 days because of the lockdown order that was in Changa but not in Manica. While Tonde did send an email message of his predicament to the human resources department as well as his supervisor, the company did not accept his excuse such that on his return to work he was charged for being absent without leave for 16 days.

As the Hearing Official who is tasked by Bata Shoe Company to hear and determine Tonde's case would you find Tonde guilty or not? [10marks]

Question 6

R bought a second hand 15tonne tipper truck from P for S35 000. On being questioned by R on whether the hydraulic system for tipping the loading box worked, P explained that "it was good as new and it worked faultlessly" and that R would not have any problem with that aspect of the truck for "a very long time". After carrying out a thorough visual examination of the truck P together with his mechanic, R bought the truck.

Two weeks after the purchase and while working at a small scale mine, the hydraulic system of the truck failed. As a result the truck could no longer mechanically tip its contents. R immediately referred the truck to reputable mechanics who advised that the hydraulic system for tipping was so worn out and irreparable. P was also advised of the development. They recommended the acquisition and insertion of a new system if the truck were to be used for mining or road construction purposes. R was advised that an entire new system costs \$3000.

During the repair of the hydraulic system the mechanics reported that the crankshaft of the truck had been welded before. While it was usable in that state, it would not last long especially if the truck was used in open cast mining environments. A good second hand crankshaft for the truck cost \$2000 while a new one was double that figure. R opted for a new crankshaft.

After effecting repairs on both defects, R has approached P for compensation for the defects that were on the truck as well as repair charges of \$700. In total he is demanding \$7700 from P. You are required to explain if P will be liable for the claimed amount.

[20marks]

b) Explain how the following terminates or discharges a contract;

- i) Novation
- ii) Prescription
- iii) Compromise

[5marks]

End of Examination Paper