



SCHOOL OF LAW

NLLB105: LAW OF CONTRACT

END OF SECOND SEMESTER EXAMINATIONS

MAY/JUN 2025

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. Credit is given for neat, logical and well written work.

Section A

Answer any two (2) questions from this section.

Question 1

Discuss the view that unbridled freedom of contract will cause public harm; as a result, governments across the world are obliged to intervene in private arrangements in order to bring order, fairness and sometimes to protect the most weak of society. Your discussion must center on four situations where strict freedom of contract is not fully respected in Zimbabwe business practices. [25 Marks]

Question 2

- a) It has been said a right without a remedy is no right at all. In light of this statement, discuss any **two remedies** available to a party who has been a victim of misrepresentation under the law of contract. [12 marks]
- b) With the aid of case law, distinguish undue influence and duress under the law of contract. [8 marks]
- c) Explain compromise as a method of terminating contracts. [5 marks]

Question 3

- a) Is it legally acceptable for a party to raise the defence of impossibility of performance arising from one's own willful or negligent acts? Explain in detail. [12 marks]
- b) How has **the legislature** intervened in the area of exemption and limitation clauses in the law of contract in Zimbabwe? [8 marks]
- c) Explain genuine consent in the law of contract. [5 marks]

Section B

Answer any two questions from this section.

Question 4

R bought a second hand 15 tonne tipper truck from P for \$35 000. On being questioned by R whether the hydraulic system for tipping the loading box worked, P explained that "it was good as new and it worked faultlessly". P further explained 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, R together with his mechanic, 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 a reputable mechanic who advised that the hydraulic system for tipping was so worn out and irreparable. The mechanics recommended the acquisition and insertion of a new system, if the truck was to be used for mining or road construction purposes. R was advised that an entire new system costs \$5000. R advised P of the development through an email.

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 labour charges of \$700. In total R, is demanding \$9700 from P.

- a) You are required to explain if P is liable for the claimed damages. [20 marks]
- b) Explain the remedy of *actio redhibitoria*. [5 marks]

Question 5

Jinda and Tafi entered into a written contract of sale of a stand in Bordavale Mutare. Among other things, the signed written agreement provided that the purchase price was \$60 000 cash. The agreement nominated Mr. Ndlovu a legal practitioner practicing in Mutare as the conveyancer of the transaction. The original title deed was also submitted to Mr. Ndlovu as conveyancer. The seller also signed a declaration by seller and deposited it with Mr. Ndlovu to facilitate the transfer process when required. Tafi paid the full purchase price on 10 January 2025. Tafi then called upon the seller to take steps to facilitate the transfer of the stand to his name. Jinda made a U-turn claiming that he never sold his stand to Tafi. He alleged that while there was a signed agreement of sale between them, the truth of the matter was that there was a verbal loan agreement between him and Tafi where Tafi loaned him \$16 000. As security for the due performance of the loan agreement, he claimed, the parties agreed to sign a sham 'sale agreement'. At the time of the loan, he claimed he had serious debt problems hence his desperation in signing the 'sale agreement'. Jinda, therefore claimed that there was never a sale but a loan.

Surprised by what he perceived as lies, Tafi approached the courts seeking an order to compel Jinda to transfer the stand to him. Jinda in turn, opposed the claim and sought a counter claim for the court to cancel the sale agreement, and for an order to allow him to repay Tafi \$16 000 and interest. His argument was that, the sale was a sham, the true agreement was a loan agreement (whose terms were not set out in his papers) and that Tafi wanted to take advantage of him.

Tafi's case was based on the following facts and circumstances:

- The parties signed an agreement of sale voluntarily, copies of which were available.
- Further evidence of the sale was in the form of the following events and circumstances;
 - Jinda nominated a conveyancer Mr. Ndlovu to do the transfer.
 - In pursuant to the above, he handed over the original title deed to the conveyancer.

- He signed a declaration that he had sold the property.
- The agreement of sale had not been cancelled or set aside by the parties hence was enforceable.
- The terms of the alleged loan were not set out by Jinda.

In view of the above, answer the following questions:

- a) What are the chances of success for Tafi and Jinda in their respective claims? [20 marks]
- b) Assuming the sale agreement between Jinda and Tafi had an “entire agreement clause”. Would it be possible for any of the parties to bring any other evidence about their agreement outside the contents of the signed agreement? [5 marks]

Question 6

- a) One commercial law practitioner was heard saying, “the Consumer Protection Act of Zimbabwe revolutionises many contracts and business transactions in Zimbabwe. Past business practices can no longer be applied under the provisions of the Act”. Discuss, whether the statement by the practitioner has any truth in it, showing the practices that have been affected, if any? [20 marks]
- b) Differentiate between novation and set off as methods of discharging contractual obligations. [5 marks]

End of Examination Paper