



“Investing in Africa’s future”

COLLEGE OF BUSINESS, PEACE, LEADERSHIP & GOVERNANCE

NMMS 207/NMMS 203: COMMERCIAL LAW/BUSINESS LAW

END OF FIRST SEMESTER EXAMINATIONS

NOVEMBER 2021

LECTURER: C. MUNGUMA

DURATION: 5 HOURS

INSTRUCTIONS

Answer one question

Marks allocated to each question are indicated in brackets at the end of the question.

DO NOT repeat or plagiarize any material.

Question 1

Goldfields Limited advised its employees who were using company accommodation to purchase them by a certain date. This was done by means of a written letter. The process required each employee to respond to the offer in writing and to pay the agreed purchase price. One employee K did not respond to the offer. He believed that when the workers committee agreed with management that sitting tenants were to be offered the houses, the committee was accepting the offer on behalf of the totality of the employees using the houses. He placed reliance on the fact that the worker's committee had signed a memorandum of understanding with management for the sale of the houses to sitting tenants. However, the MoU between the Workers Committee and the Goldfields was signed well before the individual letters were sent to sitting tenants to purchase the houses.

Shortly after the signature of the MOU, K proceeded to sign a lease agreement for the same house he was occupying with the employer. After the period of the lease expired the employer wished to evict K on the basis that: he was no longer an employee and that the lease period had lapsed without a renewal of the lease. K had been given three months prior notice to vacate the premises.

i) Advise the employer if he can evict K from the premises given the facts above? [15 marks]

ii) Does K have any defence to the eviction? [5marks]

iii) Distinguish with the aid of examples duress and undue influence and explain the effect of each on the validity of a contract. [20marks]

iv) 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 law 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. Do you have a remedy enforceable through the legal system to deal with the distribution of the effects of the deceased spouse? [10marks]

Question 2

Part 1

Peter has been working for Gem Ltd as a manager for the past five years. His contract of employment provides for an annual salary of \$50 000, and for six months' notice to be given by either party to terminate the employment. Gem Ltd alleged that Peter's negligence caused the company to lose money. As a result, Peter was dismissed without notice or payment in lieu of notice, and he was not given any opportunity to explain what happened. Furthermore, Gem Ltd has also alleged that since Peter's dismissal, the company had discovered evidence of fraud on the part of Peter.

Explain whether Peter has a remedy against Gem Ltd?

[20 marks]

Part 2

On 10 January 2011 Kenny sold his car to Daniel for \$10 000. Their agreement is that because Daniel intends to travel somewhere with it, delivery of the car will take place immediately. The purchase price was by agreement to be paid on the 30th of January 2011 (this is when Daniel expected to have received the proceeds from the sale of his house). On 15 January 2011 Daniel sells and delivers the car to Job for \$12 000 cash. Job is not aware of the contract between Kenny and Daniel. On 30 January Kenny claims payment from Daniel who fails to pay the \$10 000. In the meantime Job is involved in a near fatal accident with the car. As a result of the accident the car is damaged. Kenny is contemplating claiming the vehicle through a vindictory action. He approaches you as his legal advisor for sound advice.

- i. Advise him if his claim to repossess the car is sound in law? [20 marks]
- ii. Explain how the courts in Zimbabwe deal with exemption and exclusion clauses in contracts. In your answer justify whether the approach by the courts is good or bad. [10 marks]

Question 3

- a) A labour union member was heard bemoaning the labour laws of Zimbabwe. He said, “In Zimbabwean Labour Law the right to strike provided for in the Labour Act is illusory.” Discuss this assertion with the aid of case law authorities and provisions of the Labour Act. [20marks]
- b) On 1 January Tatenda and John entered into a contract of sale for a holiday cottage on the shores of Lake Kariba. Unknown to both parties at the time of the sale the roof of the cottage had been snapped off by a violent wind that affected the lower Zambezi area, two days earlier. Tatenda and John realize this development two days later when they travel to Kariba to carry out a handover takeover of the property. John the purchaser is reluctant to proceed with the sale when he sees the damage to the roof and other parts of the cottage which were affected by the storm. You are required to advise on the following:
 - i. Whether a valid contract was entered into in this case? [10marks]
 - ii. Who will be responsible for repairing the roof and other damaged sections of the cottage? [20marks]

END OF EXAMINATION
