



FACULTY OF LAW

ZIMBABWE EZEKIEL GUTI UNIVERSITY

Department of Private law

Law of Contract

LLB 201

30 NOVEMBER 2018

Instructions

- (i) Answer all questions in section A. All questions in this section are compulsory. Each question carries 25 marks.
- (ii) Answer any two questions from section B. Each question carries 25 marks.
- (iii) Students may bring into the exam un-annotated and clean texts of applicable legislation and the 2013 Zimbabwean Constitution. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
- (iv) Number your answers accordingly

SECTION A

Question 1

Discuss these doctrines in the law of contract, making reference to case law where appropriate.

1. *Pacta sunt servanda*
2. The *Shifren* principle
3. *Exceptio non adimpleti contractus*
4. *Aedilitian* remedies
5. *Restitutio in integrum*

[25]

Question 2

The Integration of parol evidence rule is premised on the fact that the written contract is an "exclusive memorial of the transaction and no evidence to prove its terms maybe given save the document or secondary evidence of its contents"

Examine this rule and its effects on the validity of verbal terms in a contract, making reference to cases.

[25]

SECTION B

Question 3

The Mazoe town Council is selling a 5-hectare farm that stretches along the Mazoe dam. The Council offers to sell the farm to Mr and Mrs James one of the famous business owners in the area for \$500 000. Mr and Mrs James tells the Council that they can only afford \$200 000. The Council representative convinces Mr and Mrs James that the farm is a potential gold mine and if they devote their full attention to both agricultural and mining business they should achieve a gross turnover of well over \$50 000 a month hence they will recover their purchase price in a very short period. This statement convinces them to buy the farm for \$500 000. The couple put all the farming and mining resources together and start running their business. After two years they discover that despite using the most advanced mining machinery and farming equipment and dedicating all their time to the business they never managed to obtain a turnover of more than \$2 000 per month.

(a) Referring to the reported cases, discuss the requirements that must be satisfied for a misrepresentation to found an action for rescission of a contract. In your answer, consider briefly whether the remedy of rescission is available in this case. (15)

(b) Imagine the Mazoe town council representative made an error in speech when he said the business should have a gross turnover of \$50 000 a month when he wanted to say \$50 000 a year? Discuss the effect of this error on consent. (10)

Question 4

(a) Bathroom Bizarre agrees to replace the bathroom tiles in Andrew's double story house with a brand of high quality imported tiles. The parties agree that the work must be finished by 5 November 2018 and a penalty of \$100 will be payable for each day that the work remains uncompleted after 5 November. When the Bathroom Bizarre manager calls on Central Tile Supplies (from whom he obtained a quote for the tiles. prior to contracting with Andrew), he is told that the firm's stocks have run out and that the next consignment of this type of tile will be only arriving from overseas on the 7th of November. Bathroom Bizarre can obtain the tiles from another supplier in Cape Town, but at double the cost. The manager had not anticipated supply problems when he quoted his price, and the company now stands to make a loss on the contract. Andrew threatens that he will enforce the penalty clause or sue for damages if the work is not done on time.

In light of the facts above, discuss fully the law relating to supervening impossibility of performance, referring to case law. In your answer, consider how the dispute in the above case can be resolved. (15)

b) With the aid of examples discuss the kind of breach that prevails where the time and nature of performance are intertwined to the extent that performance at a later date will be useless to the creditor.

(10)

Question 5

R and B mining company wishes to prospect for diamonds on Mr Daura's farmland in Chiyadzwa. The land is worthy \$80 000 now, but R and B mining company knows that if the diamonds are found it could be worthy \$500 000. Before incurring the expense of prospecting, he wants to be sure that if the diamonds are found he can buy the land for, at most, \$200 000. He then offers Mr Daura \$50 000 for an option to buy the land for \$200 000. Mr Daura accepts the offer and is excited that he will get \$50 000 and a further \$200 000 if R and B decides to exercise the option and buy the land.

Analyse the applicability of the doctrine of *pacta de contrahendo* in this matter highlighting the purposes of this doctrine in the law of contract. [15]

Question 6

Mr Tiens has incorporated a company that runs and operates cross border trucks from Zimbabwe to South Africa. Only one of his trucks transports petrol but it has broken down. Mr Tiens takes this truck to Croco Motors (Pvt) Ltd to have it repaired. He explains to the manager at Croco Motors that his truck needs to be repaired and serviced so that he can continue with his business. Croco motors does some repairs on the truck but when Mr Tiens tries to test drive it, it breaks down again. Mr Louis who is an experienced motor mechanic at Croco motors assures Mr Tiens that he should leave the truck so that he can repair it. After the second repair Mr Tiens drove it around but it breaks down again.

He is very upset and threatens to take his truck somewhere else for the repairs but Mr Louis reassures him that despite the first unsuccessful attempt he is one of the most experienced motor mechanics in town and that he had finally discovered where the fault was. After about three weeks Mr Tiens got his truck back but although he had lost on a lot of petrol deliveries he decided to quickly load his petrol truck and left for South Africa. Just as he drives out of Masvingo the truck brakes fail since Mr Louis had forgotten to check them when he serviced the truck. The truck goes off road and falls into a river. It is burnt beyond repair. Mr Tiens suffers serious burning injuries which require an expensive operation and his medical aid refuses to pay his medical bill on the basis that he was still on the waiting period. This means that he cannot pay his medical bills as well as other creditors and he has to sell his other truck to pay th

- (i) In light of given facts, discuss whether or not there was breach of contract by Croco motors and justify your answer. [10]
- (ii) Discuss the most appropriate remedies available to Mr Tiens in this matter, and justify why you have chosen such remedies.