



**FACULTY OF LAW**

**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

Department of Private law

Law of Contract LLB201

Supplementary examination January 2019

**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

A contract may not automatically be terminated because a party is in breach. Making reference to case law where appropriate discuss the following concepts.

1. *Mora debitoris*
2. *Mora creditoris*
3. Repudiation
4. Positive malperformance
5. Prevention of performance

[25]

### Question 2

There are several requirements for parties to enter into valid juristic acts. One of these requirements is capacity to act. Capacity to act is the legal competence to enter into valid juristic acts whereas legal capacity is the ability to be a bearer of rights and duties. In light of that it is clear that not all persons have capacity to act.

Discuss instances where a person has no capacity to act at all, has limited capacity to act or has full capacity to act.

[25]

## SECTION B

### Question 3

Sadaka is a well-known medical practitioner who graduated first class in the Medical School at University of Zimbabwe. He is now the owner of a dental practice in Chitungwiza. He recently entered into a contract to purchase a tooth plucking machine from a Sakubva Clinic that was closing down because of failure to meet the prescribed standards for it to continue operating. Sadaka just signed just signed the contract without reading its terms since he was rushing for an appointment with one of his patients. The contract contained an exclusion clause excluding liability for all defects in the machine. Having purchased the machine, he discovered that it was so defective to the extent that it rendered it useless. Sadaka purported to terminate the contract and also maintained that the contract is in conflict with the previous oral agreement he made with the Clinic.

- a) Discuss whether the Parol Evidence rule is applicable in this scenario.

[20]

- b) Explain the position of common law if Sadaka would want to terminate the contract.

[5]

#### 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 7<sup>th</sup> 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

Mr Ainsworth is the Academic manager at Peterhouse College an expensive school situated east of Marondera. During the course of mid-term 2018 the Peterhouse School Development Committee decides to increase fees from \$4 500 to \$5 800 per term because of the hyper inflation rate in the country. A certain farmer in the Marondera district Mr James has all his three children learning at Peterhouse College but due to the economic constrains he cannot afford their fees anymore. Mr James visits Mr Ainsworth in the evening at his home and demands that he forges the receipts for only two of his children. He was informed that his working environment would become very unpleasant should he not heed to the instruction. Mr Ainsworth refuses to forge the receipts but during the subsequent week he is harassed with telephone calls and notes threatening to find his house burnt to ashes. Succumbing to the pressure, Mr Ainsworth decides to forge the receipt.

Discuss the validity of the contract between Peterhouse College and Mr James.

**[15]**

Advise Mr Ainsworth on the requirements to be satisfied on a claim of duress.

**[10]**

### Question 6

Jack and James are friends who wish to purchase a maize milling machine. While taking a walk they observe a billboard advertising that sells such machinery. On entering the hardware, they meet one of the sales managers Mr Smith who informs them that there was only one machine left but due to the instability of the economy the company had decided to wait on selling it until they were certain on the form of currency to sell it in. The machine is of a very strong brand so they are willing to buy it in whatever currency the hardware would decide to sell it in. They conclude a contract that Jack and James would be given preference once the hardware becomes certain on the purchase prices.

Evaluate the principles governing such a contract and also highlight the legal position of Jack and James in the event that the hardware later sells the machine to another person without first making an offer to Jack and James.

[25]