



## ZIMBABWE EZEKIEL GUTI UNIVERSITY

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### FACULTY OF LAW

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#### EXAMINATION PAPER

**COURSE CODE** : LLB 201  
**COURSE TITLE** : LAW OF CONTRACT  
**DURATION** : 3 Hours  
**LEVEL** : 2.1  
**DATE** : 3 June 2019

#### INSTRUCTIONS TO CANDIDATES:

1. Answer all questions in section A. All questions in this section are compulsory. Each question carries 25 marks.
2. Answer any two questions from section B. Each question carries 25 marks.
3. 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.
4. Number your answers accordingly

## SECTION A

### Question 1

**Discuss these concepts in the law of contract**

1. *Par delictum rule*
2. *Pactum de non cedendo*
3. *Exceptio non adimpleti contractus*
4. *Nemo plus iuris ad alium transferre potest quam ipse haberet*
5. *Securitatem debiti*

[25]

### Question 2

Using relevant authority elaborate on the distinction between the doctrine of *pacta sunt servanda* and sanctity of contracts.

[25]

## SECTION B

### Question 3

a) What is the role of a non-variation clause in a contract? How does such a clause affect a defence based on waiver or estoppel?

(15)

(b) Critically analyse the pros and cons of doing away with the doctrine of privity of contract from our law.

(10)

### Question 4

Mr Tee is a well-known commercial farmer who owns a thirty-hectare orange plantation in Paradise Valley. He produces and sells tonnes of oranges every season to Mazoe Beverages Private

Limited Company Zimbabwe. He recently purchased a pesticide called Nofungi Pesticido company in Harare. Attached on this pesticide container are instructions and a notice written in bold letters, "No warranty as to the suitability of the product for any purpose, the seller is not liable for any damages caused by this pesticide". Mr Tee correctly followed the instructions and applied the chemical on his plants. The following day he woke up to find all his trees dry and dead. He immediately calls experts who evaluate the cause and the tests showed that the pesticide had drained the plantation and it was a very toxic and dangerous pesticide to be used on any type of plant. Mr Tee suffered about \$80 000.

Discuss the remedies available if any, against the Nofungi Pesticido company.

[25]

### Question 5

Wilson entered into an agreement of sale of a portion of land with Smith. The two parties agreed that Smith will take half of the land while Wilson remains with the other half. Later on, it transpired that in terms of an ordinance, it was not possible to subdivide the land in the way the parties contemplated and this made performance impossible.

- a) With the aid of decided cases discuss the validity of this contract. [10]
- b) Would your answer be different if Smith foresaw or should have foreseen the possibility of impossibility of performance before entering into the contract. [10]
- c) In the event that the contract contains a warranty clause that guarantees performance advise the parties on the legal position regarding performance. [5]

### Question 6

A party may transfer or relinquish his/her rights or duties to another party unless the contract is one with a personal nature. This is often done by means of sell or assignment (cession and delegation).

Your client Mr Gabbana is a South African citizen who had acquired temporary residence while pursuing his doctorate studies at the University of Zimbabwe. During his stay in Zimbabwe he purchased a seven bedroomed house in Mandara so that his family would feel comfortable when they visit him. Mr Gabbana has recently graduated and is moving back to South Africa permanently hence he would like to sell this house to his neighbour's son Dolce. He approaches you to assist him with drafting a contract of sell.

Draft a contract of sale between Mr Gabbana and Dolce.

[25]