



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 201
COURSE TITLE : Law of Contract
DURATION : 3 Hours
LEVEL : 2.1
DATE : 20 AUG 2021

INSTRUCTIONS TO CANDIDATES:

1. This exam is out of 70.
2. Answer **three** questions.
3. **Section A** is compulsory.
4. Choose any two questions from **Section B**.
5. Notes, handouts and textbooks **are not** allowed into the examination.
6. Cellphones **are not** allowed into the examination room.
7. Begin each answer to a full question on a fresh page.

SECTION A

Answer all questions in this Section

Question One

Sharai advertises the sale of her farm to Norman. However, Sharai knows very well that the area has been certified as arid following various Water and Sanitary Health (WASH) researches and reports done by the Zimbabwe National Water Authority (ZINWA) which have confirmed countless times that the area is arid and has no source of water, whether surface or underground. Sharai also knows very well that the existence of water is a key factor in convincing Norman to purchase the farm.

During negotiations, Norman asks Sharai whether the farm has got a reliable water source to which Sharai response 'if you install a borehole, you will find many things underground, not only water, but gold as well'. Following this remark, Norman agrees to purchase the farm and pays 6000 USD. Furthermore, he engages the services of Dabulamanzi after paying 500 USD to prospect for underground water. However, Dabulamanzi confirm to Norman that the place is arid and has no water, furthermore, they bring to attention the fact that the farm has been confirmed as a red or lifeless zone by ZINWA.

- a) Critically discuss the validity of this agreement in light of the given facts. (10)
- b) Would your answer with regards to the status of this contract change if Sharai alleges the following: 'it is public knowledge that the farm is arid and there is no water since ZINWA made it public information, Norman was lazy to research about this fact and should not blame anyone for his carelessness'. Motivate your answer (8)
- c) Will the contract be valid or invalid if Sharai had included an exclusion clause in the contract excluding liability for any lies she would have made to Norman? Motivate your answer. (7)
- d) What remedies of breach, if any, is Norman entitled to against Sharai and what can he recover from this ordeal. (5)

TOTAL [30 MARKS]

SECTION B

Answer any two questions from this section

Question Two

In 2018, Mboss' Yamboka fled from war in the Democratic Republic of Congo and settled in Zimbabwe as an illegal immigrant. In 2019, he got employed as a herdboyer in Domboshawa by one Mr Munyimi who runs a local butchery in the area. Part of their employment agreement was that Mboss' Yamboka will be paid 3 bulls after one year as remuneration for his services. After one year of service, Mboss Yamboka approached Mr Munyimi for his remuneration which he is now entitled to, however, and to his surprise Mr Munyimi refused to pay him alleging that he is an illegal immigrant and whatever agreement they had between them is illegal.

Mboss' Yamboka has escalated this matter before the court where you are presiding over as the Chief Justice. You are required to tender a judgment over this case based on the available facts in the case between *Mboss' Yamboka v Munyimi* 12 CC (2021). **[20 Marks]**

Question Three

Tavonga and Munyaradzi agreed to the following terms which they put into writing and signed

Clause 1.

Tavonga will sell his Dell Laptop to Munyaradzi for 300 USD in its condition regardless of the defects the laptop may have.

Clause 2.

Munyaradzi has inspected the laptop and is satisfied that the laptop is in good and fair working condition.

Clause Three

No terms of this agreement can be changed unless if parties have borne testimony to such a change in the presence of a duly registered commissioner of oaths

Pursuant to this written agreement which both parties signed, Tavonga and Munyaradzi went on to make further compromises and subsequently agreed to reduce the purchase price to 200 USD through a telephone conversation which they held.

However, when Munyaradzi paid the 200 USD for the laptop, Tavonga refused to hand over the laptop alleging that Munyaradzi should pay the balance of 100 USD which is still outstanding as per their written agreement.

- a) In light of the facts above, can Munyaradzi successfully compel Tavonga to sell the laptop at the agreed price of 200USD? (12)
- b) Tavonga alleges that Munyaradzi breached the contract by tendering a defective performance, assuming that he is right in that allegation, what remedies can he raise against Munyaradzi to justify withholding both the laptop and the tendered defective performance? (8)

TOTAL [20 MARKS]

Question Four

- a) Outline and briefly discuss the ways of incorporating terms into a valid contract (5)
- b) In terms of the *caveat subscriptor* rule, any persons who signs a contract is bound by whatever that appears above his/her signature inclusive of exclusion clauses. However, the position has slightly changed due to the introduction of the Consumer Protection Act. In light of these developments, critically discuss the legally recognised grounds of a valid exclusion clause and the various methods/ways in which a consumer can escape the consequences of such a clause.(15)

TOTAL [20 MARKS]