

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LAW OF CONTRACT - LLB 201

2022

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. This exam is out of 70
2. Answer **THREE QUESTIONS ONLY**.
3. **SECTION A** is compulsory.
4. Choose any two questions from **SECTION B**.

INFORMATION FOR CANDIDATES

1. Notes, handouts and textbooks are not allowed into the examination.
2. Cellphones are not allowed into the examination room.
3. Begin each answer to a full question on a fresh page.

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

SECTION A

This question is compulsory

Question One

Tariro parked his car at a parking bay in Bindura CBD and proceeded to make a payment of 5\$ as parking fees for 5 hours. The parking attendant named John, fully employed by Bindura Municipality issued out a receipt to Tariro. This receipt had an inscription written in small print with the following terms:

“The Bindura municipality takes no responsibility whatsoever for any loss of property, or damage of any property parked within its bays howsoever caused by any means of any patron, trespassers or employees’ innocent, negligent or intentional conduct”

Whilst the car was parked at the bay, John who is the parking attendant accidentally rammed into Tariro’s parked car when he was driving his own car which he wanted to remove from the parking lot. Tariro’s car was severely damaged and all the window panes of the car were shattered. Upon realising this damage, John then saw an opportunity and grabbed a laptop inside Tariro’s car before dismissing himself as his shift had come to an end on that specific day. Another patron came to the scene and discovered that the parking bay had no security since John had left, proceeded to Tariro’s car and took a wallet that 200\$ before driving off.

When Tariro came back to check on his car, he discovered what had happened and lodged a complaint to the Complaints Manager at Bindura Municipality. The Complaints Manager together with Tariro consulted the IT department responsible for administering and monitoring the CCTV on all the parking bays and they discovered how the events unfolded through the CCTV video evidence. The Complaints Manager reminds Tariro of the inscription written on the receipt which was issued to him the day he made a payment.

You have been approached by Tariro for legal advice. Of particular importance, Tariro wants to know the following:

Question i

How the inscription at the back of the receipt is a term applicable to him. He also require you to give a legal commentary on the status of this inscription- that is whether it is valid or invalid at law; and if it is invalid, the necessary consequence that is applicable in his case

[20 Marks]

Question ii

Assuming that the inscription written on the receipt issued to Tariro is valid and enforceable, what is the correct legal implications with regards to the following:

- a) The damage caused on the shattered window panes of Tariro’s car by John
- b) The loss suffered by Tariro on Laptop taken by John from his car
- c) The loss of a wallet containing 200\$ suffered by Tariro which was taken by a patron who later drove off.

[10 Marks]

SECTION B

Answer any two questions from this section

Question Two

Mncedisi, a recent graduate who holds a chemical engineering degree from one of the local universities in Zimbabwe got employed by Batanai Corporation as a Sales and Marketing Intern. Batanai Corporation is responsible for breeding a rare species of African Bullfrogs which they sell to Chinese restaurants in Zimbabwe. Mncedisi's roles as a Sales and Marketing Intern involves the development of fliers, business cards, video and audio skits availed to local broadcasting stations for publication. Since Mncedisi is a graduate in chemical engineering, he only took up this job to save some money so that he can maintain his girlfriend's exotic and expensive lifestyle whilst he look for a better job related to his qualifications.

After six months of employment, Mncedisi got a job offer from Kutandara African House of Liquid as a Chemical Engineer at this firm. However, Mncedisi realizes and is fully aware that the contract he signed with Batanai Corporation had the following contractual clause:

Article 3

The employee is restricted from securing any employment elsewhere for a period of 4 years after leaving service from this company

You have been approached by Mncedisi who want legal advice on the consequences that may follow if he resigns at Batanai Corporation and signs the contract with Kutandara African House of Liquid. [20 Marks]

Question Three

Thomas and Tanyaradzwa enter into a valid contract with the following obligations:

Thomas will pay a fixed amount of 50\$ on each first day of the month for a period of one year to Tanyaradzwa

Tanyaradzwa will deliver a function PA system comprising of a set of three drums, two guitars, three tambourines, two keyboards, five microphones and an amplifier to Thomas upon the first payment of 50\$.

It was agreed that this PA system will become Thomas' property upon fulfilment of his obligations.

When Thomas made the first payment of 50\$, Tanyaradzwa faithfully delivered the PA system. However, Thomas has discovered that the PA system delivered to him is not a complete set since it has one missing keyboard, one missing guitar and three missing microphones.

- a) Advise Thomas on the available legal remedies he can rely on against Tanyaradzwa in this given set of facts. **[10 Marks]**
- b) Outline and discuss the nature of breach in general terms. In your discussion, explain the concept of Mal-performance in greater detail **[10 Marks]**

Question Four

Cutie and Tashilie enter into an agreement which contains the following terms:

Term 1

Cutie will deliver 100 kgs of tomatoes to Tashilie's supermarket every Saturday subject to Tashilie paying a fixed amount of 100\$ per each delivery

Term 2

In case of a dispute, no party is allowed to seek remedy before the courts of any jurisdiction in Zimbabwe. However parties can seek the wise advice of their local pastor Reverend Papa Godcar to mediate between the parties if a dispute arise between them.

Term 3

The contract will subsist for a period of two years and any changes to it should be reduced into writing and then signed by both parties.

One Saturday afternoon following a delivery of 100kgs of Tomatoes by Cutie, Tashilie refused to make a payment alleging that Cutie delivered rotten tomatoes (which is not true). A dispute arises between the parties and Cutie seeks the intervention of courts through the services of Nyatsime Law Firm. In response to the legal action, Tashilie alleged that Cutie has no contractual right to seek the court's intervention but should rather consult the wise counsel of Pastor Godcar as per their agreement. Furthermore Tashilie alleges that Cutie's action of approaching the courts amounts to an illegal variation of their agreement as per term 2 read together with term 3. Cutie alleges that she has a constitutional right to approach the courts and that right cannot be taken away by an agreement.

You have been approached by both parties seeking a third opinion on the status, implications and consequences of this contractual undertaking. **[20 Marks]**

Question Five

Critically analyse the assertion that the Zimbabwean legal jurisprudence has already established that, in addition to the fraud exception, there may be circumstances in which an agreement, unobjectionable in itself, will not be enforced because the object it seeks to achieve is contrary to public policy. **[20 Marks]**