

**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**FACULTY OF LAW**

**COMMERCIAL LAW - LLB 302**

**JUNE 2022**

**DURATION: 3 HOURS**

**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**

**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

### Answer all questions in this section

#### Question One

Thabani, Musa, Jason, Shalom and Telstar Inc agreed to enter into a partnership with the following terms

#### **Term 1 'Contribution'**

Thabani, Musa, and Telstar Inc will each contribute 3000\$ each. Jason will offer his house as the Partnership's business office. Shalom will offer her personal services as the partnership; accountant since she holds a degree in accountancy coupled with 3 years' work experience

#### **Term 2 'Sharing of Profits'**

Thabani, Musa, Jason and Telstar will share the profits equally on a 25% stake per person in profits. Shalom as an accountant will be entitled to a monthly salary of 800\$ which is commensurable with her services as an accountant

#### **Term 3 'Partnership Business'**

The partnership is only entitled to deal with gold buying and selling

#### **Term 4 'Operations'**

Only Thabani is entitled to act on behalf of the business subject to authorization by the partnership members who have to approve his authority by means of a meeting in which they will vote over the issue.

#### **Term 5 'Status'**

Telstar Inc and Musa adopts the status of *partner en commandite*; Jason adopts the status of a silent partner; the remaining partners adopts the status of ordinary partners.

On 2 January 2022, following a tip off about a vagabond who had discovered 1kg of gold (with an official value of 55000\$) whilst digging a grave near the Mbudzi graveyard, Musa decides to seize the opportunity which will benefit the partnership business and buys that gold for 35000\$ which is a good bargain in the partnership name. The partnership members are delighted because of this rare and good piece of business which is likely to give them a profit of close to 20000\$.

The partnership members later on sell the 1kg of gold bought by Musa to Taj Abdul- an Pakistani based Business mogul for 55000\$. However, Taj Abdul discovers that the purported 1kg of gold is actually Iron Pyrite (also known as fools' gold) with a paltry value of 1000\$. To this end, Taj Abdul wants to claim his money from the partnership business

You have been approached by Taj Abdul to offer legal advice on the following issues

- i. What will you advice Taj Abdul if the partnership business allege that they are not bound to Musa's actions since Musa was not authorized to act on behalf of the partnership?

[10 Marks]

- ii. To whom can Taj Abdul successfully claim his money from in this bad transaction? In your answer, consider the implications and extent of liability for each and every involved partner in the given set of facts [20 Marks]

## **SECTION B**

**Answer any two Questions from this section.**

### **Question Two**

ABC private limited is a registered company that is into gold mining and has 7 directors. The names of the 8 directors are as follows- Mr Brown, Mr White, Mr Yellow, Mr Blue, Mr Black, Mr Green, Mrs Red and Mr Blue-Black. In 2018, ABC was offered an option by Chiko Syndicate to buy two small claims next to their big mine. The company held a board meeting to vote on whether to take this opportunity with all directors present. Mr Brown wanted this opportunity for himself so he voted against the idea of taking this opportunity. Mr White, Mrs Red, Mr Yellow, and Mr Blue-Black felt that this was a small business opportunity and decided to vote against the opportunity. Only Mr Black, Mr Green and Mr Blue voted in favour of the opportunity. As a result the company votes read as follows 5 vs 3 in favour of not pursuing the opportunity.

Subsequent to this vote, Mr Brown formed a partnership with Mrs Red, Mr Blue-Black and Mr Green and seized the opportunity in that capacity. In 2020 following some major shake-up in the management of ABC, the new management discovered this anomaly and wants to take the necessary action against these directors whom they deem to have violated the duties they owed to the company.

Advice the new management on the implications of each involved director in the partnership that seized the opportunity as to whether they breached any duty they owed to the company. [20 Marks]

### **Question Three**

- a) Discuss the concept of delivery, perfection and publicity in a contract of sale involving both a movable and an immovable asset. [8 Marks]
- b) With aid of decided case law, explain the differences between “hire-purchase sale” and “credit sale”. In the course of your answer also outline and discuss the duties of the hirer in a hire purchase agreement [12 Marks]

#### Question Four

Taona and Munya are good friends. Munya is renting an apartment at 14 Borrowdale close where he pays a monthly rental of 200\$ on each first day of the month. However, Munya has defaulted on his rentals for a period exceeding 3 months and now owes 600\$ for the unpaid rentals to Mr Moyo his landlord.

On 3 June, Taona gave Munya his car to park it at 14 Borrowdale close for safety reason since their place has got Fawcett security contracted to keep watch over the premises. Mr Moyo saw an opportunity and activated his Lessor's tacit hypothec on Taona's car which he impounded and kept as security for repayment of the rentals owed to him by Munya.

Taona then approached Mr Moyo threatening him with legal action if he does not release his car. Taona alleges that he is the owner of the car and has a real right which he can rely on against Mr Moyo.

You are required to write a piece of legal opinion advising Taona on the suitability of his real remedy claim that he is making and the defences that Mr Moyo can raise to object to his claim.

[20 Marks]

#### Question Five

Agnes Pure purchased a sewing machine from High Hopes Limited under a hire purchase agreement. High Hopes Limited did not disclose to Agnes Pure that the sewing machine was being let on second hand basis as it had been repossessed from another hirer. Agnes Pure took possession of the sewing machine but on reaching home, she realised that it was not in a working condition. When Agnes Pure read the terms of the hire purchase again, she discovered that High Hopes Limited had exempted themselves from any liability whatsoever. Analyse the legal principles applicable in the above case and advise Agnes Pure who intends to sue High Hopes Limited

[20 Marks]