



**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

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**FACULTY OF LAW, BUSINESS INTELLIGENCE AND  
ECONOMICS**

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**DEPARTMENT OF LAW AND LEGAL SERVICES**

**EXAMINATION PAPER**

**COURSE CODE** :  
**COURSE TITLE** : Commercial Law  
**SPECIAL REQUIREMENTS** : None  
**DURATION** : 3 Hours  
**LEVEL** : 3.1  
**DATE** : 09 APR 2024

**INSTRUCTIONS TO CANDIDATES:**

1. No cell phones are allowed in the examination venue
2. Answer ALL questions.
3. Do not separate subsections of questions.
4. Refer to case law, statute and/or any relevant authority, where applicable.
5. Pay careful attention to marks allocated.
6. WRITE LEGIBLY. If in doubt as to whether your hand writing is easy to read, consider writing some of your words or points in large caps.

### Question one

Write shorts notes on the following:

- (i) The difference between general and special damages 5 marks
- (ii) *Del credere* agents 5 marks
- (iii) The influence of the Constitution of Zimbabwe on private contracts 5 marks
- (iv) Latent and patent defects 5 marks
- (v) Define undisclosed principal and unnamed principal. In the course of your answer, also state the major differences between the two principals. 5 marks

Remember to always refer to relevant legislative provisions and case law

[25 marks]

### Question two

Malvin rents a flat from Patrick. Malvin notices that the geyser in the flat is leaking and does not work properly. Malvin has to have a cold shower every morning. Malvin informs Patrick about the problems with the geyser and Patrick promises to have the matter attended to, but after a month he has done nothing about the situation. Eventually the geyser ruptures and causes severe water damage to Malvin's furniture and appliances, and the flooring in the flat. When Malvin informs Patrick of this, Patrick says that the geyser's rupture was caused by fluctuations in water pressure due to the municipality switching the water supply on and off. He refuses to pay for the damage sustained by Malvin and tells Malvin that he will attend to the ruptured geyser and damaged flooring when he has the time to do so. Malvin is furious and has the geyser replaced with a new one. He also has the damaged flooring replaced. Malvin informs Patrick that he is not paying rent until the costs of the damage to the flat and his appliances have been fully paid for. Patrick immediately informs Malvin that he has breached the contract and he

must vacate the premises. Malvin comes to you for legal advice. Discuss in full the respective legal positions of the parties. [25 marks]

### Question three

(a) Andrew plans a surprise birthday party for Miriam. He invites twenty friends, including Harry, to the party. Everyone Andrew has invited agrees to keep the arrangements confidential, as it is meant to be a surprise party. However, Harry drinks too much the night before the party, and blurts out the news to Miriam. Miriam is shocked by the news and goes into hiding as she loathes parties. Andrew is forced to cancel the party. As a result of the cancellation of the party, Andrew suffers a severe financial loss. He is very upset with Harry and threatens to sue him for breach of contract. Can Andrew sue Harry?

[10 marks]

(b) Ken and Roger enter into an agreement in terms of which Ken agrees to deliver borehole equipment to Roger by train. The agreement provides that the equipment be delivered to Roger at St. Slowdown, a small village, not later than 31 December 1995. When the train is halfway to St. Slowdown, a storm comes up and delays the train. Hence the equipment is delivered to Roger only after 31 December 1995. Can Roger claim damages from Ken on the ground of *mora debitoris*?

[15 marks]

### Question four

Tapiwa purchases a house from Jamela, who is selling his only property because he is moving to a different city. In terms of the written contract the house is purchased "as is" or "voetstoots". Tapiwa takes occupation and registration of the property and the purchase price is paid. A year later Tapiwa has a solar geyser installed and uses a plumber recommended by Jamela. While the plumber is installing the geyser, he

informs Tapiwa that parts of the roof trusses are rotten and potentially could collapse in future. The fault in the trusses is not immediately visible to the naked eye, but the plumber has seen the same situation in other houses when he has repaired damage to plumbing caused by a collapsed roof. He also mentions that he previously noticed the condition of the trusses when repairing the old geyser for Jamela and informed Jamela on more than one occasion of the potential risk. A month later a section of the roof collapses during a storm and Tapiwa suffers damage to the house and her furniture and appliances. When she reports this to Jamela, he points out that the house was old and that it was purchased "as is". Jamela refuses to pay for any of the losses sustained by Tapiwa. Tapiwa comes to you for legal advice. Discuss in full Tapiwa's legal position.

**[25 marks]**