



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB302
COURSE TITLE : COMMERCIAL LAW
DURATION : 3 Hours
: [REDACTED]
DATE : 30 May 2019

INSTRUCTIONS TO CANDIDATES:

- (i) Answer any four questions from the seven questions. Each question carries 25 marks.
- (ii) Students are not allowed to bring into the examination room any material for reference purposes.
- (iii) Number your answers accordingly.

Question 1

(a) Explain the meaning of the following maxims as they apply in a contract of sale;

(i) Consensus ad idem [5 marks]

(ii) Merx [5 marks]

(iii) Pretium [5 marks]

(b) Robert agrees to sell his car, A Mercedes Benz, Registration Number, ZIM 1, to James for a USD 30 000. The two have approached you and instructed you to draft an agreement of sale for them.

Draft the agreement of sale for them incorporating the essentials of a contract of sale you have learnt. [10 marks]

Question 2

(a) Explain the legal meaning of the following as they apply to our law;

(i) Traditio longa manu [5 marks]

(ii) Traditio brevi manu [5 marks]

(iii) Constitutum possessorium [5 marks]

(iv) Nemo dat quo non habet [5 marks]

(b) Critically analyse the approach of our Courts to the law on double sales [5 marks]

Question 3

‘In cases of agency by estoppel, ratification and negotiorum gesto, there is no authorization of the agent by the principal which is an essential of an agency agreement’. Discuss the validity of this assertion citing relevant case law authorities. [25 marks]

Question 4

(a) Distinguish between negotiability and transferability of a cheque.

[12 marks]

(b) Under what circumstances may a cheque be dishonoured [13 marks]

Question 5

(a) Feltoe buys a cow from Lovemore which dies of foot and mouth a few days later. It became common cause that the cow was diseased when Feltoe bought it, but there was no sign of the disease when Feltoe bought it. Neither Feltoe nor Lovemore was aware of it. Feltoe immediately burnt the carcass, but awkwardly the rest of the herd became infected and has to be destroyed. Advise Feltoe of his rights in the following circumstances.

- (i) If the seller expressly guaranteed against latent defects [5 marks]
 - (ii) If Lovemore was a dealer in cattle [5 marks]
 - (iii) If the cow was sold voetstoots [5 marks]
- (b) Distinguish between latent and patent defects [10 marks]

Question 6

- (a) Explain the meaning of FOB sales, FOR sales and CIF sales [12 marks]
- (b) Discuss the duties of both parties in a carriage contract [13 marks]

Question 7

Company A, Company B and Company C are the main three main bread producers in Bindura and are competitors in the bread producing market. They are each situated in the three main locations in Bindura with Company A in Aerodrome, Company B in Trojan and Company C in Chanaka. In April 2019 the three companies agreed to form an association constituting the three companies only. The main objectives of this association is to create an advantage for the three companies in the market. To further their objectives, the three companies agreed to the following.

- (a) They shall share the market, each company exclusively supplying bread in the location in which it is situated.
- (b) All the companies shall change the sum of 2 RTGS dollars instead of changing different prices.
- (c) They shall work in bidding for wheat producers in Mashonaland Central in order to buy same at an affordable price.

- (d) They have agreed to set the prices of the bread at 1,50 RTGS dollars for the first six weeks so as to frustrate other competitors in the market
- (e) A general fund shall be set to assist the companies in achieving their objectives.
- (i) Discuss whether the agreement between these three companies is contrary to Competition Laws of this jurisdiction, if so the competition concerns that may arise from what the association is going to be used to do [15 marks]
 - (ii) With reference to the Competition Act (chapter 14:28) give an overview of the investigative powers that the Competition and Tariff Commission has in investigating in the conduct of the three companies in casu and remedies available to the said Commission. [10 marks]

END OF THE QUESTION PAPER