

# ZIMBABWE EZEKIEL GUTI UNIVERSITY

## CLINICAL AND PRACTICAL SKILLS

20 NOV 2019

LLB 305

EXAMINATION – NOVEMBER 2019

3 HOURS

20 NOV 2019

---

### Instructions

- i. Answer ALL the two questions from Section A.
- ii. Answer ANY two questions from section B
- iii. This is an open book examination
- iv. Write legibly

### Section A: Answer ALL Questions in this section

#### Question 1

Caefully consider the contents of *Annexure 1* to this examination which is a copy of a tweet by HON Energy Mutodi

Discuss the constitutional and ethical issues arising out of this tweet. [25]

#### Question 2

You are approached by Robert Gede, your client. He is an electrician and a car dealer. He stays at Number 755 Mboroma Street, Zengeza 5, Chitungwiza. On the 17<sup>th</sup> of November 2017, as an electrician, Robert installed a solar system as a backup to the current electricity challenges at the house of Sudden Macheyo who stays at number 15 Stoney Avenue, Greendale. Robert charged Sudent US\$3,500 being fix and supply.

Sudent failed to pay and offers his vehicle, a Honda Fit, 2008 model, Registration Number AEQ 4171. He values the vehicle at US\$5,000. He says Robert can have the vehicle and they

set off the US\$3,500 which he had charged for the solar installation. The balance on the value of the vehicle for US\$1,500 should be paid by Robert over a 3 months period. Robert will be required to comprehensively insure the vehicle during the period that he will be paying for the vehicle. In addition, he will be required to licence the vehicle. Sudden is clear that he cannot offer any guarantees as to the condition of the vehicle as he had recently imported it from Japan. Robert is happy to proceed this way.

Draft an agreement of sale giving effect to the material terms the parties have agreed upon, and incorporating any other provisions you think are needed to give precision and effect to their agreement and to protect the legitimate interests of your client and Sudden. [25]

---

## SECTION B

---

### Answer any two questions in this Section

#### Question 3

Using the above facts in question 2, you represent Sudden.

Robert takes delivery of the vehicle on the 1<sup>st</sup> of October 2018. In terms of the agreement he entered with Sudden, he will pay US\$500 per month from the 31<sup>st</sup> of October 2018 to the 31<sup>st</sup> of December 2018. Robert makes one payment on the 17<sup>th</sup> of November 2018.

By the 1<sup>st</sup> of October 2019, Robert has not made any further payment.

Sudden approaches you and is worried that Robert has failed to pay off his balance. He instructs you to recover the vehicle.

3.1. Draft a short plan of action of how you propose to deal with this case [5]

3.2. Draft the necessary papers which would support the whatever action you propose to take to recover the vehicle. [25]

#### Question 4

Continuing with the above facts, you are Robert's lawyer.

Your client recently had a vehicle which had been given to him as payment for the installation of a solar system repossessed from him because he failed to pay the balance of USD1,000 which became difficult to come by after the economy dollarized.

He approaches to sue Sudden for the payment of the USD3,500 charged for the solar system and USD500 paid as part payment for the vehicle.

Draft the necessary supporting papers for your proposed law suit.

[25]

### **Question 5**

Mr Ephraim Tauro was convicted by a magistrate of culpable homicide by a Chinhoyi Magistrate.

The facts of the case were that on the 18<sup>th</sup> of November 2017, Mr Tauro joined Zimbabweans who were celebrating Operation Restore Legacy, a military operation which eventually forced former President Robert Mugabe to resign.

He joined those who were driving at high speed, waving flags and hooting. While driving along Baines Avenue, Mr Tauro drove at an excessive speed. He had drunk three bottles of beer but was not drunk. He failed to slow down when he approached a busy intersection at Simon Vengai Muzenda Street (which used to be 4<sup>th</sup> Street) and tried to drive straight through it, ignoring a "Stop" sign which was clearly visible and required him to stop. He collided with a car that was already in the intersection, killing the driver instantly.

On the 30<sup>th</sup> of September 2018, the magistrate found Mr Tauro guilty of gross negligence and sentenced him to five years' imprisonment. However, in view of the fact that Mr Tauro had been in held custody for 10 months before his trial, the magistrate ordered that the sentence should take effect from the date on which Mr Tauro was first taken into custody.

Mr Tauro has noted an appeal against sentence in person (i.e. he is not legally represented) on the ground that the sentence is so severe as to induce a sense of shock.

You are appearing for the State and have to draft heads of argument.

Your research into the law reveals the following:

- a. Section 65 of the Prisons Act [Chapter 7:11] states: "A sentence of imprisonment imposed by any court shall take effect from the day on which that sentence is passed." In *R v Manyon-Smith* 1960 R & N 335 (S), it was held that although in England a sentence of imprisonment does not always run from the date of imposition, under Roman-Dutch common law it must do so. In *R v Chikoro* 1965 RLR 455 (G), Lewis J (as he then was) held that the only proper way for a court to take account of time a convicted person has already spent in custody is to impose a shorter term of imprisonment than would otherwise have been imposed.
- b. In *S v Dzvatu* 1984 (1) ZLR 136 (H), McNally J (as he then was) said: "... anyone who drives straight through a 'give way' sign at a T-junction and hits a ... vehicle travelling on the main road, killing two people, is prima facie grossly negligent."
- c. In *S v Ruzario* 1990 (1) ZLR 359 (S) it was held that a sentence of four months' imprisonment was appropriate for a police officer convicted of culpable homicide, where the appellant had driven negligently while under the influence of alcohol and had collided with an oncoming vehicle, killing three people.
- d. In *S v Kalize* SC-190-1990 Korsah JA said that whereas culpable homicide arising from the driving of a vehicle will not normally attract a sentence of imprisonment without the option of a fine, a custodial sentence is invariably imposed where there has been recklessness or gross negligence, or when the accused was driving under the influence of liquor or drugs.
- e. In *S v Chikomoni* HH-12-1994, Bartlett J said that when a high degree of negligence and alcohol are involved in traffic culpable homicides, prison sentences (not fines) are appropriate.
- f. In *S v Nyamandi* 1998 (2) ZLR 205 (S), a driver of a motor vehicle who failed to give way at an intersection with which he was familiar, and who collided with another vehicle on the major road, killing one person, was sentenced to 12 3 months' imprisonment of which five were conditionally suspended. The sentence was held to be not so severe as to induce a sense of shock.

Draft heads of argument for the State.

[25]