

**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**CLINICAL AND PRACTICAL SKILLS**

**LLB 305**

**29 NOVEMBER 2018**

**3 HOURS**

**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

Describe how government Bills are enacted into legislation, from the time they are first formulated as policy proposals until they are published as Acts of Parliament in the Gazette. Indicate the stages at which interest groups may have an opportunity to influence the contents of the Bills.

[10]

### Question 2

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 2018, 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.

[20]

## SECTION B

Answer any two questions in this Section

Question 3

Your client, Derrick Nyava, has been served with a summons issued out of the magistrates court, Harare. The particulars of claim read as follows:

1. Plaintiff is Paul Mapaya, a radio mechanic of 16 Mukute Street, Dombotombo, Marondera.
2. Defendant is Derrick Nyava, a sales manager of 22, 12th Street, Mabelreign, Harare.
3. On or about the 27th September, 2018, the Plaintiff was driving his motor cycle registration number ABC - 0759 along Kwame Nkrumah Avenue, Harare, when it was involved in a collision with a motor vehicle registration number AEO 1111 driven by the Defendant who was performing a right-hand turn, across the line of traffic, into the entrance of the Parkade situated between First Street and Sam Nujoma Street.
4. The collision was caused solely by the negligence of the Defendant, who was negligent in one or more of the following respects:
  - a. He negotiated a right-hand turn when it was unsafe for him to do so.
  - b. He turned across oncoming traffic.
  - c. He failed to keep a proper look-out.
  - d. He failed to take any steps to avoid the collision when by the exercise of reasonable care he could have done so.
  - e. He drove at an excessive speed in the circumstances.
5. As a result of the collision, Plaintiff's motor cycle was damaged.
6. The Plaintiff has accordingly suffered damages in the sum of \$5 000, being the fair and reasonable cost of effecting the necessary repairs to his motorcycle.
7. Despite demand, Defendant refuses and/or neglects to pay the said sum or any part thereof.

Wherefore Plaintiff claims:

- a. Payment of the sum of \$5 000.
- b. Costs of suit.

Your client tells you that the plaintiff's version of the collision is entirely incorrect and asks you to enter an appearance to defend on his behalf. He gives you his version of the facts as follows:

1. He was in his motor car facing in a westerly direction, waiting to turn right into the Parkade. Having ensured that there was no approaching traffic, he had commenced his turn when the plaintiff, who had been parked on the side of the

road facing in the opposite direction to him, pulled out at tremendous speed and collided with him. He had almost completed his turn when this happened and the left back portion of his car was badly damaged.

2. The repairs to his car cost \$6 000.

3. He has no idea what the repairs to the plaintiff's motor cycle cost, but he does not deny that the cycle was damaged.

4. The particulars regarding the parties' names and addresses and the registration numbers of their vehicles are correct.

You are required to draft a plea and counter-claim for your client.

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#### Question 4

A summons issued out of the Magistrate Court, Harare, has been served on your client, WilberHope and Inspy (Pvt) Ltd, T/A Little Hearts High School, the defendant.

The summons alleges that:

“Plaintiff's claim is against the Defendant for payment of the sum of \$8,400 being the purchase price of a 15-seater mini-bus, sold and delivered by Plaintiff to Defendant at Defendant's special instance and request in January 2016, which sum, despite demand, has not been paid.”

Your client advises that he wishes to defend the action.

The Director and Principal of the School admits purchasing the mini-bus for \$8,400 in January 2016 on hire purchase. It was supposed to be a new mini-bus, but your client suspects it was in fact a reconditioned bus. It operated for about six days and then stopped. The director telephoned the plaintiff, Great Coach Builder (Pvt) Ltd, who came, towed it for repairs and returned it the following day. It worked for a week and then broke down again. In all it broke down six times during the period January to March 2016. On the last three occasions the plaintiff kept it for several days to effect repairs.

Your client states that he has reached the end of his patience, the mini-bus is still not working, and he now intends to return it to the plaintiff.

You enter an appearance to defend and the plaintiff applies for summary judgment. The founding affidavit is made by the plaintiff's accountant, who says: “I, the undersigned Makanaka Dewa, do hereby make oath and say that:

1. I am the Plaintiff's operations manager. I am duly authorised to make this affidavit and the facts stated herein are within my own knowledge.

2. I verify the fact that the Defendant is indebted to the Plaintiff in the sum of \$8,400 on the grounds stated in the summons.
3. In my belief the Defendant has no defence to the action and has entered appearance to defend solely for the purposes of delay.
4. 4. I hereby apply to the Court to enter summary judgment as claimed in the summons.”

You are required to draft the defendant’s opposing affidavit.

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### Question 5

Your client, HON SPIWE MUKUNYAI DZE (MP), the Honourable Member of Parliament for Marondera West who lives at Bumburwi School, Chief Chihota, Marondera, tells you she wants to buy a motor-car from a Mr Christopher Musa, who is a member of the Central Intelligence Organisation (CIO) based at Munhumutapa Building in Harare. She asks you to draw up an agreement of sale. She hands you a piece of paper on which Mr Musa has jotted down the terms which she and Mr Musa have agreed upon.

These terms read as follows:

“1. Price: US\$50,000. Half paid now, rest over 12 months. Must be paid in cash. 2. Car to have full service before sale. Front tyres to be replaced. Mr Musa to pay for all this. 3. No guarantee as to condition of car. A. The HON MP can check its condition before sale if she wishes to. 4. The car radio is broken, so it’s not licensed. 5. Mr Musa to see to transfer of ownership.”

Your client tells you that the car is a Mercedes-Benz model S500, registration number AEQ-4171. Mr Musa has assured her it is a 2016 model; she would not be interested in buying an earlier model.

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 both parties.