



# UNIVERSITY OF ZIMBABWE

## 2019 November/ December Examinations

Faculty:	LAW
Department:	PRIVATE LAW
Paper code and Title:	CONTRACT LAW LB102
Duration:	3 HOURS
Authorized Materials:	Unannotated copies of prescribed Statutes and Regulations

### INSTRUCTIONS:

1. This paper contains 2 Sections and 7 Questions
2. Answer 2 Questions from Section A and 2 Questions from Section B
3. Start each question on a new page
4. This question paper comprises 3 printed pages

**NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.**

## **SECTION A**

### **Question 1**

- a) *In the absence of Animus Contrahendi and Consensus ad idem no valid contract can arise. Discuss.* **(10 Marks)**
- b) To what extent are the doctrines of freedom of contract, sanctity of contract and privity of contract still relevant to modern day Zimbabwean law of Contract? **(10 Marks)**

### **Question 2**

- a) Explain the doctrine of quasi-mutual assent and how it affects freedom of contract. **(10 Marks)**
- b) Discuss the way in which Zimbabwean courts have dealt with covenants in restraint of trade. **(10 Marks)**

### **Question 3**

- a) With reference to case law, discuss the *exturpi causa* rule and the *in pari delicto* rules. **(10 Marks)**
- b) In your view, do you think our courts should still apply the parole evidence rule to solve contractual disputes? **(10 Marks)**

### **Question 4**

Discuss the way in which Zimbabwean courts have dealt with any four of the following contractual principles:

- a) Exemption clauses
- b) *Mora ex re* and *mora ex persona*
- c) Repudiation
- d) Interim and final interdicts
- e) Cancellation of a contract

**(20 Marks)**

## **SECTION B**

### **Question 5**

On the 27<sup>th</sup> September 2019, Statutory instrument 212 of 2019 Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) Regulations, was gazetted. In terms of that statutory instrument, all domestic transactions are to be sold, priced, bartered and traded in Zimbabwe Dollars only. On the 1<sup>st</sup> October 2019, Tinashe and Tawanda entered into a verbal agreement for the sale of a residential stand for the sum of US\$30,000.00. The purchase price is to be paid in 5 equal instalments of US\$6,000.00. Tawanda as the purchaser, makes a total of 4 instalments to Tinashe before he learns from his friend Nigel that the stand in question was sold by Tinashe to another person several months earlier. Tawanda attempts to contact Tinashe but Tinashe's mobile is no longer reachable. Tawanda is devastated and approaches you for legal advice.

Advise Tawanda on the legality of the agreement and what remedies are available to him. **(20 marks)**

### **Question 6**

Stacy recently graduated from law school and got a job with a Mining Company. She has just been awarded a bonus for her sterling performance. She decides to get herself a nice car. She contacts Alfonso who is into cross border deals. Alfonso assures Stacy that he is very experienced in purchasing cars in Musina, in South Africa and assures her that he can get her any vehicle of her choice. However, this is not true, as Alfonso trades in groceries and has no experience in importing cars. Stacy is excited and on the basis of Alfonso's assurance, she contracts him to deliver a 2006, Mercedes Benz c200, sedan, with petrol engine and on her favourite colour- red. She even shows Alfonso a picture of the car she wants. They agree on ZWL\$50,000 as the purchase price. Alfonso promises to deliver the car. A few days later Stacy receives a call, its Alfonso, he confirms that he brought the car she wanted. Stacy leaves work early to meet Alfonso, with the ZWL\$50,000. On arrival, Stacy finds Alfonso with a 2004, Mercedes Benz c220 cdi, sedan, with a diesel engine and on a silver colour. She explains to Alfonso that the car is not what she asked for. Alfonso is angry, he demands immediate payment and threatens to sue her for breach of contract. Stacy rushes to you for advice.

Advise Stacy of her rights and remedies. **(20 marks)**

### **Question 7**

Xolani, approaches Stanbic Bank for a loan. The Bank approves \$20,000 and parties sign a loan agreement in which Xolani agrees to repay the loan amount with interest over a 6-month period. The monthly repayments fall due on the 25<sup>th</sup> of each month. In terms of the agreement, the Bank deducts the amount directly from Xolani's account on the due date. The last instalment is due on the 25<sup>th</sup> October 2015. A few days before the last instalment, the 24<sup>th</sup> and 25<sup>th</sup> October 2015 are declared public holidays. As a result, Xolani is unable to deposit money into his Bank account.

On the 1<sup>st</sup> November 2015, Xolani receives an email from the Bank advising him that he is in breach of his contract as he did not settle the last instalment. Xolani replies the email 2 days later, confirming that he did not pay but arguing that it was impossible for him to pay on the 25<sup>th</sup> October 2015 as it was a public holiday. Soon after, Xolani gets a call from a company in South Africa offering him a job. Xolani leaves for South Africa on the 7<sup>th</sup> November 2015. He only returns on the 1<sup>st</sup> January 2019.

When the Bank learns of his arrival, it immediately serves him with summons claiming breach of contract and demanding payment of the last instalment together with penalty interest for the period and costs of suit.

Xolani is not sure whether he should pay the debt. Advise Xolani. **(20 marks)**

**\*\*\*\* END OF QUESTION PAPER \*\*\*\***