



UNIVERSITY OF ZIMBABWE

2014 Nov/Dec Examinations

Faculty:	LAW
Department:	PRIVATE LAW
Paper code and Title:	LB102 CONTRACT LAW
Duration:	3 HOURS
Examiner:	I. MAJA
Authorized Materials:	Course outline and Unannotated statutes

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 5 printed pages

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

Question 1

a) 'There can be no valid contract if there is no offer and acceptance.'
Discuss the extent to which this assertion is true. (10 Marks)

b) 'An illegal agreement cannot be enforced at all.' With reference to decided cases, analyse the validity of this statement. (10 Marks)

Question 2

Distinguish between void and voidable contracts? Under what circumstances can misrepresentation, duress, undue influence and mistake vitiate a contract? In your view, do the remedies available in voidable contracts adequately compensate the innocent party? (20 Marks)

Question 3

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
- f) Cession

(20 Marks)

Question 4

'The fundamental rule in regard to the award of damages for breach of contract is that the sufferer should be placed in the position he would have occupied had the contract been properly performed so far as these can be done by the payment of money and without undue hardship to the defaulting party.' Per Corbett JA in **Holmedene Brickworks (Pty) Ltd v Roberts Construction Co. Ltd** 1977 (3) SA 670 at page 687C

With reference to case law, to what extent does this statement accurately reflect the Zimbabwean law relating to damages as a remedy for breach of contract? When have Zimbabwean courts granted nominal damages?

(20 marks)

SECTION B

Question 5

On 1 August 2012, Florence borrowed US\$50 000 from Fortunate. The parties agreed that Florence would repay the US\$50 000 in five equal monthly installments of US\$10 000 each from 30 September 2012 to 31 January 2013. The parties further agreed that Florence would pledge her Greendale home worth US\$120 000 as security for the repayment of the debt. Clause 8 of the agreement between Florence and Fortunate stated that *'Should the debtor fail to pay her monthly installment, the full debt becomes due and payable.'* Clause 12 of the agreement stated that *'Should the debtor fail to pay one or more installments, the creditor will be entitled to transfer the pledged property into her name.'*

Clause 18 of the agreement stated that *'This agreement constitutes the sole memorial/ whole agreement between the parties relating to the subject matter hereof. No amendment will be of any force or effect unless reduced into writing. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.'*

Florence paid her monthly installment on 30 September 2012. However, due to financial challenges that Florence had, she failed to pay the October installment. Florence asked for a 30-day extension so that she pays the October installment together with the November installment. On 30 November 2012, Florence fails to pay her installment. When Fortunate tries to call her, Florence never picks her calls or just switches off her phone.

Fortunate approaches you for legal advice. She wants to know the following:

- a) If Florence is in breach of contract;
- b) If Fortunate can proceed to transfer Florence's house in her name
- c) If there are any other remedies that Fortunate has against Florence.

Advise Fortunate.

[20 Marks]

Question 6

Flossy bought a new bakery business two months ago but is experiencing some difficulties. The first problem is that Bruce, the former owner of the bakery, has just opened a new shop selling hot take-away food about 500 metres from the bakery. Flossy was very surprised at this because her lawyer had put a clause in the sale conditions which read '*the seller cannot open a new business within two miles of the bakery for a period of three years.*' Since Bruce opened the new shop, Flossy's profits have dropped by 50%.

The second problem is that Flossy had contracted with Dynamos Football Club to sell her goods at a cup-final game to be held next week. However, the Dynamos Football Club cancels the cup-final this year due to allegations of match-fixing in previous games. Flossy had already baked a large number of football-themed cakes and frozen them in advance. The club claims that the contract is frustrated.

Advise Flossy on the legal implications raised by these problems.

(20 marks)

Question 7

Jack, a farmer, takes his broken-down tractor to Farm Maintenance (Pty) Ltd ('FM') and requests FM to do repairs to the tractor's brakes and engine. He explains to the manager that he needs the tractor to be properly overhauled so that he can prepare his fields for planting in a month's time. FM does some repair work on the tractor, but when Jack tries it out, it immediately breaks down again. The manager of FM is most apologetic and assures Jack that he will 'do whatever is necessary to rectify matters.' But the same thing happens on no less than three more occasions, Jack receiving an assurance each time that the problem will be rectified. After the second abortive attempt at repairs, Jack considers taking the tractor elsewhere, but is dissuaded from doing so by FM's manager, who is adamant that FM 'at last understands the problem and will rectify it.' Eventually, after a month and a half, Jack gets his tractor back, apparently in working order. It is already late in the season, but Jack decides to go ahead with his ploughing. When he takes to the fields, the tractor's brakes fail (due to FM's careless workmanship) and the tractor is damaged beyond repair in the ensuing crash. In addition, Jack suffers a back injury which requires an emergency operation and a month of hospitalization and post-operative treatment. Only some of Jack's medical expenses are covered by his medical aid. Because of the accident, Jack is unable to do any ploughing and he loses an entire

harvest. This means that he cannot pay his creditors and has to sell his farm (at a huge loss) to get out of debt.

Jack approaches you for legal advice. He wants to know if he can be compensated for his losses by FM. He also wants to know what other remedies are available to him. Advise Jack.

(20 Marks)

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