



# UNIVERSITY OF ZIMBABWE

## 2016 November/ December Examinations

Faculty:	LAW
Department:	PRIVATE LAW
Paper code and Title:	CONTRACT LAW LB102
Duration:	3 HOURS
Examiner:	INNOCENT MAJA
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 4 printed pages

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

## **SECTION A**

### **Question 1**

a) Under what circumstances can there be a valid contract without offer and acceptance and where parties do not generally have contractual capacity?

**(10 Marks)**

b) With reference to case law, briefly analyse how Zimbabwean courts have dealt with covenants in restraint of trade and *pactum commisorium*?

**(10 Marks)**

### **Question 2**

A. 'An illegal agreement cannot be enforced at all.' With reference to decided cases, analyse the validity of this statement.

**(10 Marks)**

B. Is there any real difference between an option and a pre-emptive right?

**(10 Marks)**

### **Question 3**

a. To what extent have our courts used the *Justus error* and *reasonable reliance* theories in deciding issues relating to mistake?

**(20 Marks)**

b) Discuss the remedies available to an innocent party whenever a contract has been vitiated.

**(20 Marks)**

### **Question 4**

'Breach, no matter how serious, does not itself terminate the contract. It is only where the innocent party cancels the contract on account of the breach that it comes to an end.' Referring to relevant case law, discuss the accuracy of this statement.

**(20 marks)**

## **SECTION B**

### **Question 5**

Simba Choto is the developer of a subdivision in Lendy Park, Marondera. On February 15, 2001, he entered into a written contract to sell a lot in the subdivision to Kuda Mbidzo for \$50,000. During negotiations, Simba assured Kuda that the property was zoned outside of the 50-year flood plain, but the written contract, which contained a conspicuous merger clause, made no mention of this. When, after signing the contract and paying Simba for the lot, Kuda applied for a building permit, he was notified that the lot was within the 50-year flood plain (meaning both that it is substantially more prone to flooding and that

it will be much more expensive to insure the house that Kuda intends to build on the lot). Can Kuda successfully sue Simba? **(20 Marks)**

### **Question 6**

Gerald borrows US\$50 000 from Willard on 10 August 2010. Parties agree that the money will accrue interest at the rate of 10% per month and should be repaid by 31 January 2011. Clause 10 of the agreement indicated that all disputes concerning the loan agreement had to be resolved by referral to arbitration.

Gerald does not pay back the money owed by 31 January 2011. Willard then instructs his lawyers, Magweta Pano, to collect the debt from Gerald. Magweta Pano writes a letter of demand to Gerald on 3 March 2011 demanding repayment of US\$50 000 plus US\$5 000 collection commission. The letter of demand scares Gerald that he rushes to Magweta Pano and undertakes to pay the debt. On 7 March 2011, Gerald signs an acknowledgment of debt undertaking to pay the debt in 5 monthly installments of US\$10 000 beginning 31 March 2011 and ending on 31 July 2011. Again Gerald fails to pay a single cent towards extinguishing the debt.

Magweta Pano issues summons in the High Court against Gerald on 1 September 2011. Because of backlog at the High Court, the matter drags on and is only decided on 2 February 2016. Justice Mafusire dismisses the matter on the basis that Magweta Pano followed the wrong procedure in bringing the matter to the High Court instead of referring the matter for arbitration.

Disappointed by the High Court decision, Willard decides to change his lawyers and approaches you for legal advice. Advise Willard on whether he has any recourse at law.

**(20 marks)**

### **Question 7**

After watching the inspiring documentary, "The King of Kong," in which Steve Weibe earned a place in the Guinness Book of World Records after breaking Billy Mitchell's high score in the video arcade game, Donkey Kong, multi-billionaire Bill Fences offered a \$1,000,000 award to "anyone who breaks Steve Weibe's world-record high score on a classic, coin-operated Donkey Kong machine." Although Donkey Kong requires near-perfect timing, fast-reflexes, and tremendous hand-eye coordination, a brash young law student, Tapiwa Chari, thought that he was up to the task, and began shopping for his very own Donkey Kong machine to take a stab at the record. He found a merchant, Netania, selling a Donkey Kong machine on ebay.com, and contacted Netania to explain that he had no money, but needed the machine to break Steve

Weibe's record, and that a reward was being offered by Bill Fences for \$1,000,000. Netania was skeptical of giving away the machine for free, but after Tapiwa promised to beat Steve Weibe's record, and promised that he would pay her in full after he had done so, Netania concocted a plan of her own. She told Tapiwa that she would be willing to give him the machine for free if he promised to give her \$500,000 upon beating Steve Weibe's record, and she further made him promise to beat Steve Weibe's record.

Tapiwa agreed to this deal, and the two arranged to have the machine delivered to Tapiwa's residence the next day. Although Netania was not a great video-gamer, she knew a lot about computers, and understood the level of skill required to play Donkey Kong successfully. Therefore, she thought that if she could manipulate the motherboard to slow down the game, even if slightly, Tapiwa would have a much better chance of beating Steve Weibe's record. After several hours, Netania succeeded in slowing down the game just enough to improve Tapiwa's chances at beating Steve Weibe's world record, while hiding what she had done to the naked eye. As promised, the next day, Netania delivered the machine to Tapiwa, without revealing to Tapiwa what she had done to the machine, and Tapiwa accepted delivery. In part due to the slowed-down motherboard, the game was easier than Tapiwa had remembered it. After several months of playing, during which time Tapiwa neglected his hygiene, his sleep, and his studies, Tapiwa finally had the world record in sight. His finals were fast arriving, and he called Netania to tell her that he probably would have to return the machine to her to start preparing for his finals. He explained that, if he did not start studying, he might get kicked out of law school, and would probably lose his summer job at Dewey Howe and Cheatem, where he would be making \$30,000 over the summer. Netania encouraged him to keep playing, and told him that getting kicked out of law school is not so bad for a millionaire. With her encouragement, Tapiwa continued to play Donkey Kong, sometimes for as many as 20 hours a day, and finally beat Steve Weibe's high score. All of this came at a pretty high cost, however. He got kicked out of law school, lost his summer job, and spent 3 days in the hospital, where he was treated for dehydration and paranoia due to excessive gameplay. Once he was released from the hospital, he called Bill Fences to collect his reward, but was told that no money would be forthcoming.

Discuss all contracts issues raised by these facts, including who will sue whom, for what, and who will likely prevail in each claim, and why. **(20 Marks)**

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