



# MANICALAND STATE UNIVERSITY OF APPLIED SCIENCES

**FACULTY OF AGRIBUSINESS AND COMMERCE**

**DEPARTMENT OF BUSINESS MANAGEMENT**

**COMMERCIAL LAW**

**MODULE CODE: BMAN 121/HBM121/HACE211**

**SESSIONAL EXAMINATIONS**

**SEPT/OCT 2021**

**DURATION: 3 HOURS**

**EXAMINER: MR S SIZIBA**

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## ***INSTRUCTIONS***

- 1. Answer all questions in Section A and any three questions in Section B.*
- 2. Section A carries 40 marks whilst Section B carries 60 marks.*
- 3. Total marks 100.*
- 4. Credit will be given for appropriate use of examples.*

## SECTION A:

*(Answer all questions in this section. Section A carries 40 marks)*

### Question 1

New farmer, Tagwireyi recently built a dam across a river which passes through his farm with his own resources. Farmers Chenjerai and Chamunorwa have plots downstream in the same area through which the river meanders towards their plots. They entered into a contract with Tagwireyi to supply them with water for general use and irrigation. Tagwireyi is bound to release 500 000 litres of water per day. A drought occurs and water levels in the dam are very low such that a continued supply downstream poses a threat to his farming operations. Tagwireyi suddenly cuts the water supply without notice and is not interested to negotiate on anything with Chenjerai and Chamunorwa. The two farmers are frustrated and decide to sue Tagwireyi for breach of contract.

- a) Define the terms **contract** and **breach of contract** as used in the passage. ( 6 marks )
- b) Explain the requirements of a valid contract of sale. ( 10 marks )
- c) The passing of **risk and benefit** is one of the fundamental aspects in a contract of sale. Explain the meaning of the statement. (10 marks)
- d) Advise them on the remedies available if any arising and their chances of success. Support your responses with decided cases. (14 marks)

**[Total marks: 40 marks]**

**Section B: (60 marks)**

*Attempt any three questions*

**Question 2**

- a) Distinguish between void and voidable contracts. (8 marks)
- b) Discuss how the doctrine of **estoppel** is established in an agency relationship. (12 marks)

**[Total marks 20 marks]**

**Question 3**

In relation to the law of contract, explain the various equitable remedies available for breach of contract. Cite relevant case law. **[20 marks]**

#### **Question 4**

On 2 January 2003 Madhiri wrote to Pfumai offering to sell him his rare painting for \$250 000 adding that he had to know of Pfumai's decision by 31 January 2003. On 10 January 2003 Pfumai replied that he did not think the painting was worth \$250 000 but would be prepared to pay \$200 000 for it. On 15 January 2003 Madhiri replied that he would not accept less than \$250 000 for his painting and on 16 January 2003 Madhiri sold the same painting to Shasha for \$300 000. On 28 January 2003 Pfumai decided to pay \$250 000 for the painting after all and wrote to Madhiri to that effect enclosing a bank cheque for that amount in favour of Madhiri. Madhiri returned the cheque to Pfumai politely informing him that the painting had already been sold to a third party. Upon hearing this Pfumai became very upset and threatened to sue Madhiri for breach of contract.

#### **Required**

- a) Advise Madhiri if Pfumai choose to sue him. ( 10 marks )
- b) Explain and discuss customary law and judicial precedence sources of law in Zimbabwe. ( 10 marks)

**[Total marks 20 marks]**

### **Question 5**

a) Explain any three types of Negotiable instruments common in commercial transactions in Zimbabwe. (6 marks)

b) Explain how duress and misrepresentation will affect the validity of contracts in business law transactions. Support your response using case law examples. (14 marks)

**[Total 20 marks]**

### **Question 6**

Explain the meaning of the following terms as used in Commercial law transactions:-

- i. *Hoor gaat voor koop* (5 marks)
- ii. Indemnity insurance (5 marks)
- iii. Sequestration of Estate (5 marks)
- iv. Vicarious liability (5 marks)

**[Total 20 marks]**

**END OF PAPER!**