



GREAT ZIMBABWE UNIVERSITY  
RECEIVED

EXAMINATIONS OFFICE

**HERBERT CHITEPO LAW SCHOOL**  
**BACHELOR OF LAWS HONOURS DEGREE**  
**LEVEL 3 SEMESTER 1**  
**EXAMINATION QUESTION PAPER**

**MODULE CODE**            **LLB 312**  
**MODULE NARRATION**   **COMMERCIAL LAW**  
**DATE**                        **2024**  
**DURATION**                 **3 HOURS**

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**INSTRUCTIONS TO CANDIDATES:**

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1. Read all questions and follow instructions.
2. The examination is out of 70 marks.
3. Section A is compulsory.
4. Answer any 2 questions in Section B.
5. This examination is a closed book, students shall not use any material in the exam room.
6. This paper consists of four pages including this cover page.

## **SECTION A**

### **THIS SECTION IS COMPULSORY**

#### **QUESTION ONE**

- a) Moses and Ben met over lunch one day to negotiate the buying by Moses of a pedigree cow from Ben. The two parties agreed to enter into a contract of sale and they took some time to examine and admire the animal. They eventually agreed not to fix a price but instead to wait for the price of the cattle to stabilise so that Moses could pay a reasonable price for the cow.

A few days after the meeting between Moses and Ben, there was a heavy storm. The cow which had been the subject of negotiations between Moses and Ben was struck by lightning and it perished in the storm. Ben's lawyers have since written to Moses demanding payment of \$ 1 000.00 being the current market value of a pedigree cow like one which perished in the storm.

Advise Moses.

[10 marks]

- b) Students at Arundel were greatly touched by the plight of orphans at the Mount Pleasant SOS Village. They, therefore, petitioned their headmaster to make a donation to the village. The headmaster obliged by endorsing at the back of this particular cheque, "please pay Mount Pleasant SOS Village' in addition to his signature. The cheque was then handed to the children's village.

The director of the village used the cheque to discharge a (personal) debt which he had with Simba, a local farmer. Samba banked the cheque at Chibi Bank Ltd. Chibi Bank Ltd presented the cheque to Gang Bank Ltd, the drawee on the cheque concerned.

- i) Assuming Gang Bank Ltd honoured the cheque would the bank be liable to any of the parties to these transactions? [5 marks]
- ii) Assuming the bank dishonours the cheque, what would be Simba's rights against the other parties to these transactions? [15 marks]

[Subtotal 30 Marks]

## **SECTION B**

### **ANSWER ANY TWO QUESTIONS IN THIS SECTION**

#### **QUESTION TWO**

- a) Mark buys a cow which a few days later dies of anthrax. It is established that the cow was infected when Mark bought it but there was no sign of the disease at the time and Mark was not aware. The Seller, however was aware that it was infected with anthrax. Mark immediately burns the carcass but unfortunately the rest of his herd becomes infected and has to be destroyed.

Advise Mark of his rights if the seller sold the cow “voestoets”

[10 marks]

- b) “Apparent or ostensible authority, as it is sometimes called, is not real authority at all. To use the words of Professor Montrose “Apparent” authority is really equivalent to the phrase “appearance of authority” Markesin and Munday, *An Outline of the Law of Agency (2<sup>nd</sup> ed.) Butterworths at p.30.*

Comment on this statement particularly in view of the fact that in our law an agent must be given a mandate by the principal and yet we recognise agency by estoppel, agency of necessity and ratification.

[10 marks]

#### **QUESTION THREE**

- a) Discuss;
- i) A note payable to bearer [5 Marks]
- i) A crossed cheque written “NOT NEGOTIABLE” [5 Marks]
- b) Explain the warranty against eviction and discuss the instances where the warrant will not apply. [10 marks]

#### **QUESTION FOUR**

- a) Lucia approaches Tatenda, an estate agent to find a purchaser for her house. She makes it clear that she wants at least \$ 50 000.00 for her house. Tatenda introduces Salome to Lucia, who after inspecting the house tells Lucia that she will pay not more than \$ 40 000.00 for

the house as it has some defects. A week later Lucia approaches Salome without informing Tatenda and informs her that she has given the matter a second thought and is willing to accept \$ 40 000.00 if she is still interested. Lucia and Salome then conclude a valid contract of sale without the involvement of Tatenda. Tatenda comes to hear of the transaction and demands his customary 5% commission.

Advise Tatenda [10 marks]

- b) Explain the role of sellers in hire-purchase transactions in relation to buyers on the one hand and finance companies on the other hand. [10 marks]

**TOTAL MARKS:** [70 marks]

**END OF QUESTION PAPER**