

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2005

TITLE OF PAPER : **COMMERCIAL LAW (FULL TIME)**

COURSE CODE : **AC 202**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :
a) **THE PAPER CONSISTS OF SIX QUESTIONS.**
b) **ANSWER ANY FOUR (FULL) QUESTIONS.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION 1

Linda and Vusie entered into a partnership whose objective was to deal in brand new computers. Vusie was to contribute E20,000 plus a van. Linda, who owned a stand with offices in Manzini, was to contribute that property to the partnership to be used as the principal place of business.

Subsequently, the partnership sent Linda to Infotech Ltd, Mbabane, to negotiate the purchase of 40 brand new computers. Hugh Steele, the Managing Director of Infotechs Ltd, informed Linda, however, that there were no new computers, but that Infotechs Ltd was offering high quality used computers, at give-away prices. Linda explained the opportunity to Vusie who, however, insisted on dealing in new computers only. It is no secret that Vusie's business acumen (and intelligence) is not very high, and that he would have needed more careful explanation to understand how lucrative the new deal would be.

Linda then decided to go into business with Hugh Steele and invested E50 000 in the used computers. This resulted in a net profit of E120,000 which was accordingly paid into her personal account at Standard Bank, Mbabane.

Vusie now insists that Linda must account for the profits to the partnership. He is also unhappy that Linda has not yet arranged to transfer the land on which the partnership business is into the names of the partners.

Advise Vusie as to his rights and remedies, if any.

[25 MARKS]

QUESTION 2

Explain and critically discuss the law appertaining to the control and regulation of insurance agents in Swaziland.

[25 MARKS]

QUESTION 3

Matse bought a beautiful silver-grey Honda motor-bike, 1200c.c., at E3 600, on hire-purchase terms. He was to pay a deposit of E1 600 and four monthly instalments of five E500 each.

Before he paid the deposit, Matse asked the salesman why the price appeared to be too low. The latter replied, "The guy who sold it to us was in a big hurry ... but it is an excellent machine! I can bet my life on it!"

Matse then excitedly paid the deposit and took the bike without even test riding. The Salesman quickly presented him with a document entitled "Contract of Sale", and asked him to sign at the bottom thereof. Matse did sign, but without reading as he was too excited. Above his signature

were the words, "Buyer agrees that seller shall not be liable for any negligence, or any warranty, whether it be express or implied, whether it be statutory or otherwise".

Matse then rode off. A few minutes later, the bike caught fire and was extensively damaged. Examination by experts indicated that the cause of the fire was a serious electrical fault.

Discuss all legal issues, and advise Matse fully.

[25 MARKS]

QUESTION 4

It was stated in Jajbhay v Cassim, 1939 AD 543, that the par delictum rule must not be applied rigidly or mechanically, but that the courts must grant relief to one of the parties where that is necessary to do justice between man and man.

It has been suggested that this statement has resulted in uncertainty in this area of law.

Do you agree? Explain, referring to decided cases.

[25 MARKS]

QUESTION 5

"People Food", a catering service business in Manzini, has sued the UNISWA SRC for catering services rendered at the latter's request in connection with the annual end of year dance. The plaintiffs state that one Joy Mbingo, the Social Secretary of the SRC, had requested the plaintiffs "on behalf of the SRC" to render these services. The SRC denies that it had requested the plaintiffs to render the said services or that the plaintiffs had in fact rendered these services. The SRC further disclaimed any authority on the part of the Social Secretary to act in its behalf. It appears that by its constitution, all financial transactions of the SRC are to receive the joint approval of the Vice President, the Financial Secretary, the Treasurer as well as the Social Secretary. It further appears, however, that one Nomvula, the Senior Caterer of the plaintiffs' Catering organization, who had contracted on behalf of the plaintiffs, had knowledge of the following facts:

- (a) that Joy Mbingo is a member of the UNISWA SRC;
- (b) that the dance in question was the annual dance held by the SRC for all students of UNISWA.
- (c) that Joy Mbingo had organized dances in the past, and was organising this one, and
- (d) that previous accounts rendered to the SRC in connection with such dances had been settled in full without any complaint.

Advise the parties as to their rights and liabilities.

[25 MARKS]

QUESTION 6

Write short notes on the following:

- (a) Insurable interest (7 marks)
- (b) Specific performance (6 marks)
- (c) Undisclosed principal (6 marks)
- (d) difference between the anonymous partnership and the partnership en commandite. (6 marks)

[25 MARKS]