

UNIVERSITY OF SWAZILAND**FACULTY OF COMMERCE****DEPARTMENT OF LAW****SUPPLEMENTARY EXAMINATIONS, JULY 2005**

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC 202**

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

INSTRUCTIONS : **1) The paper consists of five questions.**
2) Answer any four questions.

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

QUESTION 1

Highlight and critically evaluate four major ways in which the Hirepurchase Act 11/1969, has improved the position of the buyer in a hirepurchase transaction in Swaziland.

[25 MARKS]

QUESTION 2

Dube is in the process of promoting Dube Investments (Pty) Ltd. He wants to purchase cars in order to get the company on its feet quickly. He is prepared to use his own funds for this purpose; but he would like the company to re-imburse him after it has been formed.

Referring to relevant authorities, advise him fully on the possibility of Dube Investments (Pty) td, ratifying the contract when it (the company) is eventually incorporated, and as to what he should do to ensure that ratification is, in fact, legally possible.

[25 MARKS]

QUESTION 3

Matse, of Nhlangano wanted to buy a car from Cooper Motors, Manzini. He sent a telegram to the Manager thereof stating thus:

“Get us one brand new Mercedes Benz 220, silver blue, as you have done in the past, at the price of E250,000”.

The Manager’s reply, by letter, was “We shall go ahead with the order, unless you instruct us otherwise, but the price is now E315,000.”

Cooper Motors then set aside for Matse the only brand new Mercedes 220 in their show room, and hoped that Matse would contact them again soon. However, although he received the letter from Cooper Motors, for two months Matse remained silent. And Cooper Motors additional efforts to contact him were also in vain.

When he finally telephoned Cooper Motors, he informed them that he would take the car. Unfortunately, however, the line was faint, and the Manager who received the call was busy and unable to concentrate; but he believed that after a whole two months of silene, the purpose of the call would only be to cancel the order.

The car was thus sold to someone else. Matse was furious when he learnt of this.

Referring to authority, explain to him the legal implications of the whole transaction, and advise him as to whether he can sue Cooper Motors for breach of contract.

[25 MARKS]

QUESTION 5

Ice Shongwe acquired a fire policy from Royal Insurance Company, Mbabane, in respect of a computer shop in Manzini which belongs to his friend, Homeboy Dlodlu, a corporation Secretary at Royal Sun Hotels Ltd. Ezulwini. As Dlodlu is often busy at eZulwini, it is Shongwe who is responsible for managing the shop. He loves the shop because Dlodlu pays him well. Moreover, he is contractually entitled to 10 per cent of net profit as annual gratuity.

Shongwe also owns 55 percent of the shares in Beauty Parlor (Pty) Ltd, which imports and sells new clothes. Considering the extent of his interest in the company, Shongwe took out another policy, from the same insurance company against fire and theft.

Recently, there was fire at the computer shop in which all the property in the shop was destroyed. A few days later, numerous new suits belonging to Beauty Parlor (Pty) Ltd were stolen from the business premises of the company.

Shongwe now wants to know whether he can recover in respect of the two insurance policies with the Royal Insurance Company, Mbabane.

Advise him, referring to case law.

[25 MARKS]

QUESTION 6

Write short notes on the following:

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| (a) | <u>Concursus animorum</u> and <u>consensus ad idem</u> ; | (5 marks) |
| (b) | the difference between mistake and misrepresentation; | (6 marks) |
| (c) | agency of necessity | (7 marks] |
| (d) | leases under S.2, Hire purchase Act, 1969. | (7 marks) |