

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2006

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC 202- 1&2**

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

INSTRUCTIONS : **ANSWER ANY FOUR QUESTIONS.**

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

QUESTION 1

- a) A takes his car to a garage for repairs. On the reverse side of the document given to A is printed, "The garage accepts no responsibility for damage by fire". As a result of an accident at the garage, A's car is damaged.

Advise A as to whether or not he has any claim against the garage. [10 marks]

- b) "Every contract is an agreement, but not all agreements are contracts"

Discuss what is meant by the above statement giving your own examples. [15 marks]

[TOTAL : 25 marks]

QUESTION 2

Discuss what remedies, if any, are available to P in each of the following situations:

- a) P buys a tin of fish from S. unknown to both P and S the tin is not properly sealed and the fish has gone bad. P becomes very sick after eating the fish and spends some days in hospital incurring expenses and loss of income. [9 marks]

- b) P buys cattle fodder from S and feeds it to his cattle. Unknown to P and S, the fodder contains a poison which kills P's cattle. [7 marks]

- c) P buys cement from S who assures him that it is as good as another kind of cement which S previously supplied to P. After using the cement in laying water pipes it proves to be defective and the work has to be done all over again at a total cost of E15,000.00

[9 marks]

[TOTAL : 25 marks]

QUESTION 3

- a) "Any contract entered into by a minor without the consent of his guardian is voidable".

Discuss this principle and illustrate using the case of *Edelstein v Edelstein N.O.* 1952 (3) SA P.1 (A.D.) [13 marks]

- b) Where a minor who is fully developed physically, goes to a major to contract with him, will he (the minor) be bound on contract? [12 marks]

[TOTAL : 25 marks]

QUESTION 4

- a) X, Y's son knows that his father wants livestock. X buys it on credit from A, on behalf of his father. He buys it without the father's knowledge or authority. Is Y bound to pay A? [3 marks]

- b) Discuss Y's position if Y pays A the purchase price [3 marks]

- c) Discuss the prerequisites that must be complied with for agency to be created by ratification, giving examples [12 marks]
- d) Q, a company, renders catering services in connection with a dance to the Uniswa Student Body. The services have been rendered at the request of S the Minister of Culture (SRC). Q knew S had organised similar dances for the Uniswa Student Body before and that previous accounts had been paid. Is the Uniswa Student Body bound to pay Q for the services rendered? [4 marks]
- e) Enumerate the requirements for Agency by Estoppel as were stated in *Monzali v Smith* [4 marks]
- [TOTAL : 25 marks]

QUESTION 5

- a) Define a pledge and a mortgage. Discuss the difference between them. [15 marks]
- b) "A Lien lost voluntarily can never be revived". Explain giving examples. [10 marks]
- [TOTAL : 25 marks]

QUESTION 6

- a) In a contract of lease of immovable property, "Hire goes before sale"
- Discuss the meaning of this maxim. [10 marks]
- b) Give two instances where this maxim would not apply. [5 marks]
- c) What is meant by a "tacit relocation of a lease"? What terms would be deemed to be excluded? [9 marks]
- [TOTAL : 25 marks]

QUESTION 7

The Standard Bank of Swaziland Ltd. entered into a contract with Mandla Ndlovu for the sale of a car to him at E60,000.00. In terms of the agreement Ndlovu was to pay a deposit of E30,000.00 and the balance was payable in six monthly instalments of E5,000.00 each.

It was further agreed that ownership in the car would pass to Ndlovu as soon as he paid the deposit. However, if Ndlovu sold or attempted to sell or to encumber the vehicle before payment of the purchase price, ownership would automatically revert to Standard Bank.

Ndlovu was given possession of the car upon payment of the deposit as agreed. After payment of three instalments, Hlophe sold the car to Muzi Zwane at E65,000.00 cash.

In turn, Zwane resold the car to Bheki Mbatha at E70,000.00. However, before the car was delivered to Mbatha, thieves broke into Zwane's garage and stole it.

- a) Would the Hire Purchase Act of 1969, be applicable to the circumstances of this case? [5 marks]
- b) Assuming Ndlovu has disappeared, advise Standard bank Swaziland Limited as to their rights. [10 marks]
- c) Does Mbatha have any legal remedies against Zwane? Explain. [10 marks]

[TOTAL : 25 marks]