

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

COURSE NAME : COMMERCIAL LAW 2
COURSE CODE : AC202-2
TIME ALLOWED : THREE (3) HOURS
INSTRUCTIONS : ANSWER ANY FOUR (4) QUESTIONS

[STUDENTS ARE REQUESTED IN THEIR OWN INTERESTS TO WRITE LEGIBLE]

ADDITIONAL MARKS WILL BE GIVEN FOR CITING (USING) THE RELEVANT CASE LAW.

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

QUESTION 1

- 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 2

- 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 3

- a) What does the expression "negotiable instrument" mean? [10 marks]
- b) What is the remarkable feature (the Chief characteristic) of a negotiable instrument? [10 marks]
- c) Distinguish between Order Bill and Bearer Bill, giving examples. [10 marks]
- [TOTAL : 25 marks]

QUESTION 4

- 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 5

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]**

QUESTION 6

- a) Define an insolvent. [5 marks]
 - b) Outline the "acts of insolvency" which are necessary to establish the fact that the debtor is insolvent. [10 marks]
 - c) What is the effect of unconditional rehabilitation? [5 marks]
 - d) When can an insolvent apply for rehabilitation? [10 marks]
- [TOTAL : 25 marks]**

QUESTION 7

- a) Define a partnership. [5 marks]
 - b) Discuss the nature of a limited liability company. [5 marks]
 - c) Name the documents that must be submitted to the Registrar of Companies prior to registration as a company and list the contents of such documents. [15 marks]
- [TOTAL : 25 marks]**