

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF COMMERCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATIONS, MAY 2006**

**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 QUESTIONS.**

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

**QUESTION 1**

(a) With the aid of the case of *LittleJohn v. Norwich Union Fire Insurance Society* 1905 TH 374, discuss the concept of “insurable interest” in the law of insurance. [12 marks]

(b) What do you understand by the doctrine of “subrogation” in the law of insurance? [13 marks]

**[TOTAL: 25 MARKS]**

**QUESTION 2**

Explain and critically discuss the law pertaining to undisclosed principal in Swaziland.

**[25 MARKS]**

**QUESTION 3**

Two close cousins, Peter and James, hire premises in Manzini for the purpose of running business. For several months, they share the rent, water and electricity costs.

Peter deals in electronic appliances. James deals in stationery, but the two remain so close that whenever one has a bad month, the other gives him half of his profits as a matter of course. This has continued for a whole year.

Recently, however, James went for an order for stationery worth E500,000, leading him to profits of E240,000 that month. In the meantime, Peter’s business was not doing well at all.

Peter demands that he gets 50 percent of James’ profits. James has given him E10,000 “to keep you afloat”, but he totally rejected the idea of sharing his profits with Peter.

Peter comes to you for legal advice. Advise him.

**[25 MARKS]**

**QUESTION 4**

Matse, a rich business man in BigBend, wanted to buy a car from Cooper Motors Ltd, Mbabane. He sent a telegram to the Manager thereof, stating thus:

“Get me one brand new BMW, Charcoal grey, type and quality like last year, at the price of E180,000”.

The Manager’s reply by letter was: “We shall go ahead with the order, unless you instruct us otherwise, but the price is now E220,000”.

Cooper Motors then set aside for Matse the only brand new BMW of the type they knew Matse wanted, and believed that Matse would contact them again soon.

However, although he received the letter from Cooper Motors, for two months he remained silent. And Cooper Motors additional efforts to contact him were all in vain.

Matse eventually telephoned Cooper Motors to inform them he would take the car. Unfortunately, it was at a busy time and the line was faint. Indeed, the Manager who received the call was unable to concentrate due to pressure of work; but he believed that after the whole two months of silence, the import of the call could 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, advise him as to whether he can successfully sue Cooper Motors for breach of contract. **[25 MARKS]**

### **QUESTION 5**

Write short notes on the following:

- (a) Statutory illegality (8 marks)
- (b) Contracts in restraint of trade (9 marks)
- (c) Specific performance (8 marks)

**[25 MARKS]**

### **QUESTION 6**

- (a) A hire-purchase agreement was entered into and was duly signed by Lin Piao the seller and Muzi the buyer in respect of a sewing machine worth E2 400 payable in instalments of E120 per month. However, the sewing machine which had been on special offer, was delivered to Muzi's without his having paid any deposit, which Lin Piao emphasized was not necessary. This was in November, last year. In January, 2006, having found a much better sewing machine at a lower price, Muzi who had paid all instalments regularly, decided to return the sewing machine to Lin Piao. He also demanded a refund to himself of the three instalments paid under the arrangement.

Lin Piao who is shocked now comes to you for legal advice.

Referring to relevant case law, and the Hirepurchase Act, 1969, advise him.

- (b) Referring to S.17 of the Hirepurchase Act, 1969, discuss the decisions in Mthembu v. Central Mart, 1956(2) SA 45, and Coetzee v. Impala Motors, 1962(3)SA 539.

**[25 MARKS]**