

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATIONS, JULY 2006

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC 202**

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

INSTRUCTIONS : **1) THE PAPER CONSISTS OF SIX QUESTIONS.**

2) ANSWER ANY FOUR QUESTIONS.

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

QUESTION 1

Zwane sold the chassis and body of a used bus to Motsa. The price was E12 000 and the sale was voetstoots.

Thereafter, Motsa bought an engine, gearbox and all other necessary spares, and transformed the “scrap” into a sixty-seater bus worth E100, 000 which earned E13,000 a month.

However, after using the bus for six months, Motsa discovered that the chassis was cracked. While he was still trying to address this problem, Motsa was confronted by one Dube who produced an old registration book to show that the “scrap” they had used to build their bus was his (Dube’s); and he very noisily demanded that it be returned to him.

Consequently, Motsa handed over the bus to Dube and looked for Zwane.

Confronted by Motsa about the cracked chassis and the fact that the “scrap” he had sold to him belonged to Dube, Zwane argued thus:

- (a) that as the sale was voetstoots; there could be no recovery for breach of any implied warranty;
- (b) that in any case as Motsa had given the bus to Dube, Zwane would not be of any help over the issue of the “scrap”;
- (c) that if he was to pay any compensation, it would be for the “scrap”, not the bus; and (d) that if Motsa wanted to recover for the cracked chassis, he would have to return it to Zwane.

Advise Motsa fully, referring to authority.

[25 MARKS]

QUESTION 2

Jajbhay v Cassim, 1939 AD 543, held inter alia, 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 this is necessary to do justice between man and man.

It has been said that this holding has resulted in uncertainty in this area of law.

Do you agree? Explain, referring to decided cases.

[25 MARKS]

QUESTION 3

Outline and critically evaluate the law pertaining to the regulation of insurance business in Swaziland. [25 MARKS]

QUESTION 4

(a) Outline the prerequisites for, and implications of ratification in the law of agency. [10 marks]

(b) Sipho is in the process of promoting Success Story Ltd, a touring taxi-hire company. 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. However, he would like the company to re-imburse him after is has been formed.

Referring to relevant authorities, advise him fully on the possibility of Success Story Ltd. ratifying the contract when it is eventually formed; and as to what he should do to ensure that ratification is in fact legally possible. [15 marks]

[25 MARKS]

QUESTION 5

Matse of Big-bend wanted to buy a car from Super Motors Ltd; Manzini. He sent a telegram to the Manager thereof stating thus:

“Get us one brand new BMW seven series, any colour, as you have done in the past, at the price of E210,000”.

The Manager’s reply, by letter, was: ‘We shall go ahead with the order unless you instruct us otherwise, but the price is now E285,000.’

Super Motors then set aside for Matse the only brand new BMW seven series in their show room, and hoped that Matse would contact them again soon. However, although he received Super Motors’s letter, he remained silent for two months due to pressure of work. And Super Motors efforts to contact him were in vain.

Eventually, he sent an e-mail to Super Motors Ltd. informing them that he would take the car. Unfortunately, the Manager at Super Motors who hardly ever used his computer, did not see the message on the computer. In fact, he believed that after a whole two months of silence, Matse had lost interest in the BMW.

The car was thus sold to someone else. Matse was furious when he learnt of this. He now wishes to sue Super Motors for breach of contract.

Advise Matse fully, referring to relevant authorities.

[25 MARKS]

QUESTION 6

“Despite the Hire Purchase Act, 1969, the buyer in a hirepurchase transactions remains extremely vulnerable”.

Discuss.

[25 MARKS]