

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION, DECEMBER 2007

TITLE OF PAPER : **COMMERCIAL LAW**

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

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

INSTRUCTIONS :

- 1. ANSWER ANY FOUR QUESTIONS.**
- 2) ALL QUESTIONS CARRY EQUAL MARKS (25 MARKS)**
- 3) CREDIT WILL BE GIVEN FOR THE USE OF RELEVANT CASE LAW.**

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

QUESTION 1

(a) Discuss the essential elements of a valid contract. [12 marks]

(b) Dinner Times Restaurant advertises Rum and Maple grand of cigarettes at a price lower than other cigarettes. Your friend rushes to the shop and buys ten (10) packets. A moment later he returns to the shop to buy more. However, Magagula the owner of the shop refuses to sell to him more at that price though he still has some stock.

Your friend decides to take him to court on the grounds of breach of contract. Discuss and advise your friend as to his chances of success. You may cite any relevant case law.

[13 marks]

QUESTION 2

(a) Define “Agency”. [5 marks]

(b) Discuss agency created by Ratification giving examples. [4 marks]

(c) What prerequisites must have been complied with for agency to be created by ratification? [12 marks]

(d) What are the requirements for Agency by estoppel as stated in *Monzali v Sm* [4 marks]
TOTAL: 25 MARKS

QUESTION 3

(a) Define a lease. [5 marks]

(b) List the essentials of the contract of lease. [5 marks]

(c) What does the maxim “Hire Goes Before Sale” mean? [5 marks]

(d) What does the term “Tacit Relocation of lease” mean? [10 marks]
TOTAL: 25 MARKS

QUESTION 4

(a) What are damages? [5 marks]

(b) What must an aggrieved party be able to prove to be able to succeed in his claim for damages for breach of contract? [10 marks]

(c) What is meant by that an aggrieved party must try to minimize his loss? [5 marks]

- (d) Distinguish between foreseen and foreseeable damages. [5 marks]

QUESTION 5

- (a) Define insolvency. [5 marks]
- (b) List the five (5) acts of insolvency. [5 marks]
- (c) Discuss the distinction between voluntary and compulsory sequestration. [15 marks]
[25 MARKS]

QUESTION 6

- (a) Define the Banker - Customer relationship. [5 marks]
- (b) D, the drawer of a cheque, asked P the payee to fill in a cheque for E1,000.00 which he did and the drawer signed. So much space was left that when it was presented to the bank the E1,000.00 had changed to E10,000.00. The bank paid out E10,000.00.
- D the drawer contemplates suing the bank. Advise D on his chances of success.
- (c) What effect does a forged drawer's signature have on a cheque? [10 marks]
TOTAL: 25 MARKS

QUESTION 7

- (a) Define a partnership. [5 marks]
- (b) Discuss the differences between a partnership and a company. [10 marks]
- (c) List and discuss briefly the mode by which a partnership may be terminated [10 marks]
TOTAL: 25 MARKS