

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2008

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) Define a Hire Purchase Agreement. [10 marks]
- (b) How does a Hire Purchase Agreement differ from an instalment Sales Agreement? [15 marks]
- TOTAL: 25 MARKS

QUESTION 2

- (a) Define a cession. [5 marks]
- (b) What types of cession are there? Briefly discuss the types of cession that are there. [5 marks]
- (c) Not all rights are cedable. List the rights that cannot be ceded. [5 marks]
- (d) Define a pledge and a mortgage outlining the differences between the two. [10 marks]
- TOTAL: 25 MARKS

QUESTION 3

- (a) An employer will not simply be vicariously liable because the servant's delict was committed by the servant during working hours. If the act is not within the scope of employment, the employer will not be liable.
- Discuss the meaning of this statement using case law to illustrate. [15 marks.]
- (b) According to the principle of vicarious liability, a servant who in the course of his duties and in furtherance of his master's interest, commits a wrongful act which interferes with the rights of third parties, thereby binds his master in damages to such third parties.
- Discuss the criticisms against the above principle from the point of view of:
- i. The Master;
- ii. The Servant. [10 marks]
- TOTAL: 25 MARKS

QUESTION 4

- (a) X leases his building to M for five years. The composite contract of lease also contains a right of pre-emption granted to M to buy the premises. The lease expires but M continues to pay the rent which X accepts, with no formal agreement. After a year M is informed that X has sold the building to P.

M objects on the ground that X has breached the right of pre-emption granted to him in the lease agreement.

Is there any ground for M's objection? Discuss fully. [20 marks]

(b) Explain the maxim 'Hire goes before sale'. [5 marks]

TOTAL: 25 MARKS

QUESTION 5

(a) What is the legal nature of an offer of a reward? [8 marks]

(b) Distinguish between an option and a right of pre-emption. [8 marks]

(c) If the offeror stipulates the mode of acceptance, will a valid and binding contract arise if the offeree uses another mode of acceptance that arrives earlier than, or by the same time as the prescribed mode? [9 marks]

TOTAL: 25 MARKS

QUESTION 6

(a) Distinguish between **essential** terms, **natural** terms and **incidental** terms of a contract. [9 marks]

(b) What contracts must be put in writing for them to be valid? [8 marks]

(c) Define misrepresentation and state the forms it may take. [8 marks]

TOTAL: 25 MARKS

QUESTION 7

(a) Distinguish between the various forms of marriage under civil law. [15 marks]

(b) Under what circumstances may a woman married in community of property validly contract. [10 marks]

TOTAL: 25 MARKS