

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2008

TITLE OF PAPER : **COMMERCIAL LAW I**

COURSE CODE : **AC 202**

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

INSTRUCTIONS :
1) **THE PAPER CONSISTS OF SIX QUESTIONS.**
2) **ANSWER ANY FOUR (4) QUESTIONS.**

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

QUESTION 1

“Where in the ordinary course the post office is used as the channel of communication and a written offer is made, the offer becomes a contract on the posting of the letter of acceptance.”

Per Kotze JP., in Cape Explosive Works Ltd v. South African Oil and Fat Industries, 1921 CPD 244, at 266.

Using illustrations and decided cases, critically discuss this rule.

[25 MARKS]

QUESTION 2

Motsa wanted to buy a good second-hand car. Gama showed him his own, which Motsa drove around Mbabane for 30 minutes. However, as he did not know much about cars, he asked Gama about the car’s engine.

“Perfect! Perfect! I can bet my life on it!” Gama said. Motsa then paid the cash price, E30,000, and signed without reading, a long document entitled “Contract of Sale”, which included the following stipulation:

“All warranties, express or implied, common law or otherwise, are hereby excluded.”

However, even if Motsa had read the contract, he would never have understood the complicated legalistic language therein.

The following day when the car broke down (in Motsa’s possession), Motsa was advised by mechanical engineers that the car’s engine was fundamentally faulty.

Discuss all legal issues and advise Gama as to his rights and remedies.

[25 MARKS]

QUESTION 3

About two years ago, Dube bought an electronic typewriter with which he started a Secretarial Service. He was joined a year later by one Musi, a village-mate from Mafutseni, who brought along a brand new computer.

No formal contract was ever entered into as the basis of their relationship, but from the very first week they contributed equally for rent, water and electricity expenses. Moreover, for a long time relations were quite warm. If any one of the two run short of cash, the other would freely give money to the one without.

A few months ago, they began operating under the style “Bafana Printers” which was duly registered as a business name. They, however, operated separate bank accounts, but had a joint account to deal with cheques payable to the business name.

From December 2007, Musi started attracting customers worth about E10,000 a month, while Dube’s customers remained worth a mere E3000 or so. From that time, although Musi continued to pay 50 per cent of rent, water and electricity, he did not at all share his takings with Dube even when the latter had bad days.

Moreover, Musi now refuses to share with Dube a sum of E55 000, being proceeds of a recent order from the Ministry of Education.

Referring to authority, advise Dube fully as to his rights.

[25 MARKS]

QUESTION 4

Zwane went to Royal Insurance Company and took out a fire policy in respect of a boutique in Manzini which belongs to his sister, Futhi, a Professor at UNISWA. As Futhi is often busy at the University, it is Zwane who is responsible for managing the boutique. He loves the boutique because Futhi pays him well. Moreover, he is contractually entitled to 20 per cent of net profits as annual gratuity.

Zwane also owns 59 per cent of the shares in One-Stop Computers Ltd. which imports and sells new sewing machines. Considering the extent of his interest in the company, Zwane took out another policy from the same insurers, against fire and theft.

Recently, there was a fire out-break in which all the property in the boutique was destroyed. A few days later, five of the computers belonging to One-Stop Computers Ltd. were stolen from the business premises of the company.

Zwane, now wants to know whether he can recover in respect of the two insurance policies with the Royal Insurance Company.

Advise him fully.

[25 MARKS]

QUESTION 5

It has been said that the Hirepurchases Act 11/1969, has hardly improved the position of the buyer in Swaziland.

Do you agree? Explain.

[25 MARKS]

QUESTION 6

Write short notes on:

- (a) the difference between constitutum possessorium and traditio brevi menu. [8 marks]
 - (b) the difference between implied authority and apparent authority. [9 marks]
 - (c) sharing the value of goodwill in a dissolved partnership. [8 marks]
- [25 MARKS]**