

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATIONS, JULY 2008

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 (4) QUESTIONS.**

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

QUESTION 1

Zanele of Manzini telephoned to Al Qaim Motors, Mbabane, ordering” that Azure-blue Toyota Emina, 2000 model, which I saw in your show-room yesterday, at E41 000. Money is not my problem ... I want it very urgently”.

Mamba, a salesman at Al Qaim Motors, clearly heard the message, and was pleased because the car had been in the garage for a long time.

However, before he could answer back, there was a clap of thunder, and the lines went dead. When after two days there was still no telephone link to Manzini, Mamba wrote a letter to Zanele which read:

“We accept your offer. Pay and collect the car anytime.” He then gave the letter to Express Couriers, a letter-delivery agency in Mbabane, which, however, only delivered it to Zanele two days later. By then Zanele had bought another Toyota Emina from Atlas Motors, Manzini,. She refused to buy the one from Al Qaim Motors, Mbabane.

Al Qaim Motors now want to sue Zanele for breach of contract. Advise them.

[25 MARKS]

QUESTION 2

Joseph Dube bought a deep-freezer at Jumbo Discount Stores at E6 000. After paying the price, Dube was presented with a receipt to sign. Right above the signature was a statement in bold characters which stated, “The sale is subject to conditions and terms overleaf”.

Behind the receipt, were the following terms:

- a. Goods once sold shall not be returnable; neither shall Jumbo Discount Stores refund any money paid for any goods or services supplied or sold by them to anyone what so ever.
- b. All warranties express or implied, common law or otherwise, are hereby excluded.
- c. Jumbo Discount Stores shall not be liable for any negligence, fraud or misrepresentation in connection with the sale herein.

Dube who was in a hurry did not have time to read these “conditions and terms”, but when he asked an assistant in the store what these were, the latter said, “Nothing special really. The usual stuff-Guarantee for a year - a return the item if it is faulty - that sort of thing.”

Dube happily signed the receipt, and took the deep-freezer home. He discovered that very day that the motor needed replacement otherwise the freezer would never work.

When he returned the freezer to Jumbo, he was shown the terms at the back of the receipt.

Does he have any remedies against Jumbo? Advise him.

[25 MARKS]

QUESTION 3

Explain and discuss the law relating to the remedy of specific performance.

[25 MARKS]

QUESTION 4

Thandi and Nelsiwe have signed a deed of partnership for the purpose of establishing a bakery. Under the partnership agreement, each partner is to make a cash contribution of E33 500. Nelsiwe is also to give her pre-fabricated house worth E60,000 to the partnership for the purpose of housing the workers. Contrary to the partnership agreement, a year after the partnership entered into business, Nelsiwe has refused to allow the workers to live in her house. There are also signs of a love affair developing between her and Thandi's husband.

Advise Thandi as to her rights and remedies.

[25 MARKS]

QUESTION 5

Critically discuss the law relating to the control and regulation of the insurance industry in Swaziland.

[25 MARKS]

QUESTION 6

“Hirepurchase is a trap for the extravagant and the impecunious ... they are made to buy things they do not want, with money they do not have, on terms they do not understand.”

(Per a B.Com. student at UNISWA).

To what extent is this a correct characterisation of hirepurchase in Swaziland after the enactment of the Hirepurchase Act 11/1969?

Explain.

[25 MARKS]