

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2009

TITLE OF PAPER : **COMMERCIAL LAW (F/T)**

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

Jajbhay v Cassim, 1939 AD 543, held inter alia, that the *par delictum* rule must not be applied mechanically, but that the courts must grant relief to one of the parties where this is necessary to do justice between man and man.

Explain and critically discuss the application of this holding, referring to relevant case law. [25 MARKS]

QUESTION 2

One evening, recently, Homeboy Motsa went to Karim Patel’s boutique in Manzini and selected clothes worth E6 255. He then asked Patel to pack the clothes for him.

Meanwhile, Motsa pulled out a cheque book. Patel objected strongly, insisting he only wanted cash. “Don’t you know me?” Motsa replied, with a smile. “Just ask the palace. Ask Lozitha ... Ask anybody”, Motsa added, while writing the cheque for E6 255 in favour of Karim Patel.

“You know, these are for my wife’s birthday ... I had forgotten about it ... I’d normally pay cash, of course, but now the banks are closed”, Motsa said, with a smile, while giving the cheque to Patel, and showing him his name and physical address in the telephone directory.

Patel then accepted the cheque and gave him the clothes. However, when Patel presented the cheque the following day, it was returned to him marked “no account”.

Was a valid contract ever made between Karim Patel and Homeboy Motsa? [25 MARKS]

QUESTION 3

While drunk, Siphso smashed his car into the gate of his house. He had to pay E13,000 in order to get the car repaired.

Shocked, Siphso went to Steve Matse, an insurance agent and broker, to ask for advice. Matse advised Siphso to get a comprehensive motor insurance policy in order to ensure that in future he did not have to look for such a large sum of money from his pocket. Siphso complied.

Matse then filled in a proposal form for Siphso. To the question whether Siphso had ever had an accident, Matse filled in a “no”. Thereafter, Siphso just signed the form which was forwarded to the Swaziland Royal Insurance Corporation (hereinafter SRIC).

Subsequently, SRIC issued the relevant policy. The sum insured was E200,000, and the premiums were to be E1500 per month.

Six months later, Siphon, who had been paying his premiums regularly through Steve Matse's agency, again smashed into his gate while drunk. He then wrote to the SRIC seeking compensation. They wrote back to say that they had never received his premiums (which was true) and that preliminary investigations indicated there were other legal barriers to Siphon's getting compensation from SRIC.

Discuss all legal issues and advise Siphon.

[25 MARKS]

QUESTION 4

"Hire purchase is a contract whereby the extravagant and impecunious 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. II student at UNISWA.

Explain and critically discuss the quotation in the light of the provisions of the Hirepurchase Act 11/1969.

[25 MARKS]

QUESTION 5

KFC (Pty) Ltd, a catering service business in Mbabane, has sued the UNISWA SRC for catering services rendered at the latter's request in connection with the annual Freshers' Ball. The plaintiffs state that one Fikile Fakudze, the Social Secretary of the SRC, had requested the plaintiffs "on behalf of the SRC" to render these services. The SRC denies that it had requested the plaintiffs to render the said services. The SRC further disclaimed any authority on the part of the Social Secretary to act in its behalf. It appears that by its Constitution, all financial transactions of the SRC are to receive the joint approval of the Vice-President, the Financial Secretary, the Treasurer, as well as the Social Secretary. It further appears, however, that one Dumsile, the Senior Caterer of the plaintiffs' Catering organization, who had contracted on behalf of the plaintiffs, had knowledge of the following facts:

- (a) that Fikile Fakudze is a member of the UNISWA SRC;
- (b) that the dance in question was an annual event held by the SRC to welcome new students at UNISWA;
- (c) that Fikile Fakudze had organized similar dances in the past, and had also organized this one; and
- (d) that previous accounts rendered to the SRC in connection with such dances had been settled in full without any complaint.

Advise the parties as to their rights and liabilities.

[25 MARKS]

QUESTION 6

“I am ... prepared to go to the extent of holding that a partnership though not a corporate individual, is so far analogous to a *persona* that it may be called a quasi-persona.”

Per *Potchefestroom Dairies v Standard Fresh Milk Supply Co.* 1913 TPD 506, at 513.

Discuss.

[25 MARKS]