

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
COMMERCE
MAIN EXAMINATION PAPER, MAY 2009

TITTLE : COMMERCIAL LAW
COURSE CODE : IDE – AC 202
TIME : THREE HOURS [3HRS]
INSTRUCTIONS ; 1. THERE ARE NINE (9) QUESTIONS IN THIS PAPER
2. ALL QUESTIONS ARE COMPULSORY
3. CLEARLY AND CORRECTLY NUMBER EACH QUESTION

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

Q1

Menzi has a 10years lease contract on Masukus farm ERF 101 Malindza. On the 5th year, he enters into a further contract with Dlamini in terms of which he buys ERf 101. Is the first contract and or the second still valid? Why? [5]

Q2

Mr C, an ordinary resident of Ka Shali community is approached by Chief Nkomo Dlamini of Ka Shali. He offers him to take part in a deal of stealing and transporting cattle from Nhlangano to Manzini. Upon reaching Manzini the cattle is received by Chief Dlamini, who in terms of the agreement is to pay Mr C R450. per cow . Mr C has not been paid for the last R50 cows.

What remedy does Mr C have? Discuss [15]

Q3

Ntoko has concluded a contract of purchase and sale between herself and Mda, in terms of which Mda undertakes to sell Golf 4 {1.4} to Ntoko for R60 000. This is a cash sale. On the other hand Ntoko undertakes to purchase the same from Mda. On the 10th of October Ntoko collects the car from Mdas premises. She pays the R60 000. Transfer in terms of documents takes place. This is a cash sale.

While Ntoko drives her car from Mdas place in Manzini to her place in Ntfonjeni, her car loses power, starts cutting and comes to a stand still at Malagwane hill. A reputable mechanic informs Ntoko that there is an electrical connection fault and it looks like a man made mistake. The car needs urgent mechanical attention as it will not move.

(a)What remedy does Ntoko have in law? [20]

(b) If you had been appointed as Mda's legal representative, involved in the drafting of the contract above, how would you have drafted it any different? [3]

(c) Ntoko resides in Ntfonjeni, she had to tow the car from Malagwane to Ntfonjeni on this fateful day. Take-U- There Towing charged her R5 000 for this. Three different mechanics have confirmed that the electrical fault has damaged the engine and that it will cost not less than R15 000 to repair it. She has incurred further costs due to this.

What is the legal position in this regard? Discuss fully! [8]

Q4

A, B's girl friend knows that B wishes for a new bedroom suit as the old one is falling apart. A goes ahead and buys it on credit from C. What form of relationship exists between the 3 parties? [15]

Q5

Gugu and Mandla enter into a contract of letting and hiring. In terms of which Gugu undertakes to let Mandla's 2 bedroom apartment for residential purposes situated in Mbabane South. The apartment has wooden floors. Gugu is to pay Mandla R2900 at the end of every month. The rent is pre paid. Gugu has been staying there for 2 months and has paid all due rents, on the third month she suffered serious neck injury, broke her left wrist and ankle, from a fall due to the collapsing of the balcony. At the time of her fall, Gugu had been standing on the balcony, sipping wine. She fell with the glass, on to it and further cut her face as she fell onto the pieces of the glass.

Discuss fully the legal consequences of this accident. [6]

Q6

State the requirements that should be met for a master to be held liable for servant's delict [5]

Q7

Educate a layman what a negotiable instrument is, also give an example. [5]

Q8

What is the doctrine of Estoppel, describe, give examples and explain. [10]

Q9

A takes his kombi to B's garage for repairs. On the reverse side of the document given to A it is printed "The garage accepts no liability for damage of vehicle..... as a result of an accident in the garage"

The garage structure is old, and falls down, A's kombi is badly damaged. What remedy in law does A have? [8]