

UNIVERSITY OF SWAZILAND

FACULTY OF COMMERCE

DEPARTMENT OF LAW

**EXAMINATION PAPER, MAY 2010
(MAIN)**

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC202**

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

MARKS ALLOCATED : **100 MARKS**

INSTRUCTIONS : **ANSWER QUESTION ONE WHICH IS COMPULSORY, AND ANY THREE (3) QUESTIONS OF YOUR CHOICE.**

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

[TURN OVER]

QUESTION 1

John and Sarah Simelane decided to buy a summer cottage along the scenic and exclusive ocean shore of Umhlanga Rocks in Durban, South Africa. They then approached an estate agent who located one, and thereafter a meeting with a loan officer, Mr Menzi Shabangu, of First National Bank (FNB) was arranged to sort out the finance. Because the Simelanes had an excellent credit history and were in good shape financially, the mortgage went through without any problems. The Simelanes received a payment book that they were to use to make their E8,000 payment each month. John got into a regular habit of stopping by the FNB branch each month to pay the mortgage in cash. Then, seemingly out of the blue, the Simelanes received a notice informing them that their mortgage had been assigned to Capital Bank, headquartered in Kwazulu-Natal. Under the assignment, the Simelanes would have to mail their mortgage payment to Capital Bank in South Africa. John, who in the past had experienced very poor service from Capital Bank and generally from banks in South Africa, refused to acknowledge the assignment and continued to pay the FNB. Xolile Nkosi, a new teller with FNB, continued to accept the cash payments from John. When Capital Bank threatened to "foreclose" on the Simelanes' mortgage for non-payment, the Simelanes argued that they had continued to pay FNB. Capital Bank, however, had no record of the payments and denied that they had received anything from the Simelanes. The bank also could not locate Xolile Nkosi, who no longer worked for the FNB, and who had left FNB for parts unknown.

Referring to the relevant principles associated with privity and third party contract, and case law, determine the prospects of the parties in this case.

[25 MARKS]

QUESTION 2

Write short notes on the following:

- | | |
|-----------------------------|---|
| a) Suspensive condition | 5 |
| b) Subrogation | 5 |
| c) Natural/Implied term | 5 |
| d) <i>Stipulatio alteri</i> | 5 |
| e) Assignment | 5 |

[25 MARKS]

QUESTION 3

“To determine whether a particular restraint of trade clause in a contract is valid, a court will consider two central issues....”

Referring closely to the case of SUNSHINE RECORDS V FROHLING, render a critical analysis of the status of the law relating to contracts in restraint of trade.

[25 MARKS]

QUESTION 4

Patricia owns a large house in Madonsa Township, Manzini. She has taken out an insurance policy against fire in respect of the house with Manzini All Purpose Insurance Company Ltd. At the time he took out the insurance policy, the house was used as a dwelling house for herself and her family.

The previous policy had expired and Patricia filled out a fresh proposal form for the renewal of the policy (she had diligently paid her premiums for 10 years

without making any claim) on 10th May 2009. In July 2009, Patricia's family moved to Simunye and Patricia gave the house to her elder brother, for use as a maruala bar and brothel. In the proposal form there was the following standard question: "To what use is the house to be put?" Gwebu's answer was: "dwelling house." The Insurance Company promptly renewed the policy.

On the night of 15th November 2009, while the house was packed with intoxicated and happy customers, a drunken customer accidentally forgot to stump his lit cigarette and there was a fire which completely destroyed the house. Patricia now seeks to recover on the policy, but the Insurance Company through its assessors discovered that the house was in fact being used as a marula bar and brothel, refused to pay.

Is Patricia entitled to recover on the policy?

[25 Marks]

QUESTION 5

"Especially in long and complicated negotiations, before a contract is concluded, it is common that the parties record the progress they have made in a partial agreement...."

- a) Referring closely to the case of PITOUT V NORTH CAPE LIVESTOCK CO-OP (facts and analysis), discuss the statement of opinion. 15
- b) Explain four (4) other forms of statement and clearly distinguish whether they constitute "offers". 10

[25 MARKS]

QUESTION 6

Explain and fully discuss the law relating to Partnerships in Swaziland.

[25 MARKS]