

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF LAW

EXAMINATION PAPER, JULY 2010
(SUPPLEMENTARY)

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC202**

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

MARKS ALLOCATED : **100 MARKS**

INSTRUCTIONS : **ANSWER ANY FOUR (4)**
QUESTIONS OF YOUR CHOICE.

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

[TURN OVER]

QUESTION 1

The manufacturers, Godoba Soapers (Pty) Ltd, of a patented special soap called "banza" published an almost unbelievable advert in the Times of Swaziland undertaking to pay a sum of E100,000 to any user of the soap who still had unwanted bodily hair after daily application of the soap for 3 weeks. At the bottom of the advert, Godoba Soapers stated that they had already deposited E1 million at Swazi Bank to "show their sincerity in the matter." Phephile, a recent UNISWA graduate majoring in Chemistry, read the advert, purchased the soap and applied it to her overgrown hair as directed. However, despite the lapse of two months her hair had not disappeared, and in fact, it had grown excessively due to the soap. She has decided to sue the manufacturers of the soap.

Drawing on the law of offer and acceptance, critically discuss the probable outcome of the suit.

[25 MARKS]

QUESTION 2

Write short notes on the following:

- | | |
|----------------------------|---|
| a) <i>Mora Debitoris</i> | 5 |
| b) Insurable Interest | 5 |
| c) Restraint of Trade | 5 |
| d) Acceptance | 5 |
| e) <i>Error in negotio</i> | 5 |

[25 MARKS]

QUESTION 3

Paul Somnotfo, a wealthy and highly respected mining magnate, was diagnosed with pancreatic cancer by his trusted doctor and confidante of many years, Dr Sean Sigebengu. Somnotfo and Dr Sigebengu had shared many memorable moments together playing golf and attending high society functions. On these, and other occasions, it was not unusual for Somnotfo to solicit the advice of Dr Sigebengu on how, when and where to invest his millions to get the highest returns. Frequently, because Dr Sigebengu's advises and opinions proved very profitable, Somnotfo often leaned heavily on the Doc's statements even though he knew they were informal and unprofessional. Nevertheless, Sigebengu's position was not in dispute – he was the Somnotfo family doctor.

Whilst in his hospital bed, half-dazed and realising that the end was near, Somnotfo solicits the advice of Dr Sigebengu on where to invest his fortune for the benefit of his surviving wife, children and grandchildren after he is gone. An excited Dr Sigebengu immediately advises him to invest in a promising start-up I.T company similar to *Google*, and hands him a form to sign making Sigebengu the fund manager (with an equity stake of 40%). The money transfer is effected almost immediately, but six months later, the investment proves unprofitable as the market price crashes resulting in a near 70% wipe-out of the Somnotfo family fortune. Despite this misfortune, Dr Sigebengu makes a tidy E6 million by reason of his equity stake in the company exercised before the crash.

Mrs Somnotfo is furious and applies to the High Court of Swaziland for an order of rescission of the contract between her ailing husband and Dr Sigebengu on grounds undue influence.

Discuss the prospects of success of this court application.

[25 MARKS]

QUESTION 4

Critically discuss the remedy of Specific Performance under our law.

[25 MARKS]

QUESTION 5

In a decided case, the defendant engaged the claimant as a courier to accompany him on a European tour commencing on June 1. On 11 May, he wrote to the claimant to say that he no longer required his services. On 22 May, the claimant commenced legal proceedings for breach of contract. The defendant objected that there was no actionable breach until 1 June.

State and explain the type of breach of contract entailed in the above case, discuss the other forms of breach of contract under our law.

[25 MARKS]

QUESTION 6

Critically discuss the law relating to Partnership under our law.

[25 MARKS]