

UNIVERSITY OF SWAZILAND
DEPARTMENT OF ACCOUNTING
AC 102 MAIN EXAM PAPER

Programme of Study : **Bachelor of Commerce I F/T**

Title of Paper : **Commercial Law**

Course Code : **AC 102**

Time Allowed : **3 Hours**

INSTRUCTIONS:

1. The total number of Questions on this paper is six (6).
2. Answer any Four (4) Questions.
3. Each question carries 25 Marks.
4. In answering any question, note that the quality of the content, use of authority, clarity of expression and legibility of handwriting are absolutely essential.
5. Begin each question on a new page.

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

- A. During a heavy drinking session one evening Musa, a major agrees to sell his motor vehicle to Brian for E5000,00. The next day when Brian wants to pay and take delivery of the car, Musa tells him that he was drunk when he entered into the agreement and did not know what he was doing. Musa refuses to go through with the sale. Brian institutes action against him in the Manzini Magistrate's Court of Swaziland, claiming delivery of the car against payment of the price. From the evidence the judge finds that Musa was very drunk at the time that he concluded the agreement. The Judge must now decide, as a question of law, whether Musa is bound by the agreement which he entered into while drunk. On consulting with the authorities, the judge finds that:
- i. There is a decision of the full bench of the High Court of Swaziland in which it was held that a party to a contract was bound by the contract even though he was drunk at the time when the contract was concluded;
 - ii. There are two decisions handed down by two Judges sitting alone, one in the Mbabane Magistrates Court and the other in the High Court of Swaziland, in which it was held that a party to a contract is not bound if he was under the influence of alcohol when it was concluded; and
 - iii. There is a decision of the Supreme Court of Appeal in which it was found on the evidence that the party concerned was not drunk at the time when he concluded the contract and was therefore not bound by it. However, the Supreme Court of Appeal in giving judgment said that if it was found that he was drunk then he would not have been bound.

From your knowledge of the doctrine of judicial precedent and principles of contract, what do you think will be the finding of the judge of the Manzini Magistrate's Court?

[10 Marks]

- B. Mthimkhulu is 17 years old. His parents go on holiday leaving him alone in his house. He is given an adequate allowance and told not to buy anything on credit. Without telling his parents, he decides to hold a party. He purchases ten crates of beer from a bottle store on credit for E300.00. Only seven crates are consumed, but he keeps the balance for himself. Mthimkhulu goes to the store and pays E50.00 towards the debt from his own money. He promises to pay the whole amount within a week. After a month Mthimkhulu has still not paid the debt. Advise the store-keeper of his legal position.

[15 Marks]

[Total: 25 Marks]

QUESTION 2

- (A) In terms of the Pollution Act, 1995 it is an offence to sell or purchase cigarettes. SS sells and delivers 1000 cigarettes to BB. They agree that BB will pay the price 30 days after delivery. After six weeks BB has still not paid the price. Advise SS regarding:
- Payment of the price; and
 - Recovery of the cigarettes.

[10 Marks]

- (B) List and briefly describe the essentials or pre-requisites of a binding contract.

[10 Marks]

- (C) What is the difference between a sale and a pledge?

[5 Marks]

[TOTAL: 25 MARKS]**QUESTION 3**

Motsa went to Patel's showroom, and pointed to a dark-grey Mercedes C230, 2002 model, priced at E100,000. Patel said to him, "Right choice! Awesome machine! Awesome! Can get you to Cape Town in a day!" Motsa, however, noted some scratches on the driver's door, and asked Patel whether the car had ever been involved in an accident. "Not really... No," Patel replied. "But a second hand car cannot be perfect! Never! He added emphatically.

Motsa then quickly paid, signed a document Patel asked him to, a copy of which he took with him, although he had not read it. That very day, however, the car's steering mechanism and brakes failed, and the car crashed into a shop wall at the Mall in Manzini.

The disappointed Motsa towed the wreck back to Patel's garage, and demanded an immediate refund of the E100,000. Patel pointed to a clause in the contract Motsa had signed. It read thus: "Seller shall not be liable for any warranty, express or implied." Patel also emphasized that the defects had not existed before the sale.

Discuss all legal issues and advise Motsa.

[25 Marks]**QUESTION 4**

- Define "Agency." [5 Marks]
- Discuss agency created by Ratification giving a case law example. [6 Marks]
- What are the requirements of agency by estoppel as stated in the case of *Monzali v Smith* 1929 AD 382? [4 Marks]
- With reference to case law, outline the legal relationship between principal and agent. [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 5

Twycross and Grant signed a deed of partnership for the purpose of establishing a guesthouse. Under the partnership agreement, each partner is to make a cash contribution of E100, 000. Twycross is also to give his prefabricated house worth E80, 000 to the partnership for the purpose of housing the workers. Contrary to the partnership agreement, a year after the partnership entered into business, Twycross refused to allow the workers to live in his house. There are also signs of a love affair developing between him and Grant's wife.

Advise Grant as to his rights and remedies.

[25 MARKS]

QUESTION 6

With reference to case law, discuss the concept of "legal personality" of a company.

[25 MARKS]

- END OF EXAM