

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
FACULTY OF COMMERCE

EXAMINATION PAPER, NOVEMBER 2010
(MAIN)

TITLE OF PAPER : **COMMERCIAL LAW**

COURSE CODE : **AC201 (IDE)**

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

In the case of *Dawson v Helicopter Exploration Company*, correspondence had been exchanged between two parties which did not make it clear if there was a contract. Plaintiff had been offered a 10% share in exploration rights if he would accompany the defendant on exploration flights. The plaintiff wrote back: "If you will inform me, if and when you obtain a pilot for your helicopter, I will immediately take steps ... to be on hand." Defendant ignored the "agreement".

Referring closely to the seminal case of *Pitout v North Cape Livestock Co-op Ltd* (describing all the facts and judgment), analytically decide whether a contract was concluded between Plaintiff and Defendant above.

[25 MARKS]

QUESTION 2

Write short notes on the following:

- a) Suspensive condition 5
- b) Cession "out and out" 5
- c) Natural/Implied term 5
- d) *Stipulatio aiteri* 5
- e) *Caveat emptor* 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

Spencer Tailors, a reputable clothing store in Manzini, is considering suing Somnotfo, a minor to whom Spencer had supplied fine silk clothes, including five Levi jeans and four Polo shirts totaling E12,000.00. Somnotfo is a Second year Commerce undergraduate student at UNISWA and used part of his E25,000.00 allowance to purchase the items. Reputed on campus to have a flair for the finer things in life, the clothes were suitable according to his assumed station in life. But for a university student, his existing wardrobe could easily clothe a bus load of people.

With these facts in mind, critically determine the prospects of suit success by Spencer Tailors

[25 MARKS]

QUESTION 5

Explain and critically discuss the requirements for a valid sale under our Law, as well as the “passing of risk”.

[25 MARKS]