

UNIVERSITY OF SWAZILAND
DEPARTMENT OF ACCOUNTING
AC 201 SUPPLEMENTARY EXAM PAPER- Semester- 1

Programme of Study	:	Diploma in Commerce II F/T B. Ed. II & IDE
Title of Paper	:	Commercial Law I
Course Code	:	AC 201
Time Allowed	:	3 Hours

INSTRUCTIONS:

1. 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 MUST NOT BE OPENED UNTIL PERMISSION HAS
BEEN GRANTED BY INVIGILATOR(S).**

QUESTION 1

(A) Jele operated a grocery store in Siteki which sold to the consumers in the surrounding areas. He sold the business to Masuku and agreed, as part of the deal, not to engage in the grocery business in Siteki for five (5) years. Two (2) years later, Jele opened in Siteki a new grocery store in competition with Masuku. Masuku has sued to obtain an interdict against Jele.

Will the interdict be granted? Provide a reasoned answer.

[15 Marks]

(B) Write an essay in which you explain the reception of the Roman-Dutch (Common) law in Swaziland

[10 Marks]

[TOTAL: 25 MARKS]

QUESTION 2

Motsa went to Patel’s show room, and pointed to a dark-grey Mercedes C230, 2002 model, priced at E110,000. 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 can not be perfect! Never!” He added emphatically. *

Motsa then quickly paid and 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 breaks 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 E110,000. Patel pointed to a clause in the contract Motsa had signed. It reads 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 3

Thandi and Nelsiwe have signed a deed of partnership for the purpose of establishing a Bakery. Under the partnership agreement, each partner is to make a cash contribution of E33,500. Nelsiwe is also to give her pre-fabricated house worth E60,000 to the partnership for the purpose of housing the workers. Contrary to the partnership agreement, a year after the partnership entered into business, Nelsiwe has refused to allow the workers to live in her house. There are also signs of a love affair developing between her and Thandi's husband.

Advise Thandi as to her rights and remedies.

[25 MARKS]

QUESTION 4

To what extent has the Hire Purchase Act of 1969 protected buyers of goods on hire purchase in Swaziland?

[25 MARKS]

QUESTION 5

(A) Discuss the essential elements of a valid contract.

[12 Marks]

(B) What are the requirements for Agency by estoppel as stated in *Monzali v Smith*?

[4 Marks]

(C) In *Potchefstroom Dairies v Standard Milk Supply* 1913 TPD 513, a partnership is referred to as analogous to a legal persona or *quasi persona*.

Discuss citing relevant authority.

[9 Marks]

[TOTAL 25 MARKS]

QUESTION 6

With reference to case law, differentiate between:

- (A) A sale and a pledge [4 Marks]
- (B) Partnership and employment. [5 Marks]
- (C) Void, voidable and unenforceable contacts. [6 Marks]
- (D) An offer and an expression of willingness to do business. [5 Marks]
- (E) *Ratio decidendi* and *Obiter dictum*. [5 Marks]

[TOTAL 25 MARKS]

END OF PAPER