

**UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF ACCOUNTING**

**EXAMINATION PAPER, MAY 2011
(MAIN)**

TITLE OF PAPER : COMMERCIAL LAW
COURSE CODE : AC 202 - IDE
DURATION : 3 HOURS
MARKS ALLOCATED : 100 MARKS
INSTRUCTIONS : ANSWER QUESTION ONE
WHICH IS COMPULSORY, &
THREE (3) QUESTIONS
OF YOUR CHOICE.

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

Question 1

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 for rescission of the contract between her ailing husband and Dr Sigebengu on grounds certain formidable grounds.

Critically discuss the prospects of success of this court application.

[25 MARKS]

Question 2

Indicate whether a valid offer and acceptance has been effected in the following factual matrices:

- a) In the case of **CRAWLEY v R**, a shopkeeper placed a placard outside his shop advertising the sale of a particular brand of tobacco at a cheap price to

attract the public. Having bought some of the tobacco Crawley returned for more but the shopkeeper refused to serve him and requested him to leave. Crawley refused, and was later charged with statutory trespass. 5

b) Spencer offered to sell a farm to Bricks for E10 million. Bricks thought about this offer by considering his financial status and later called Spencer to inform that since the farm was barren, he (Bricks) was only prepared to pay Spencer 5 million. Spencer flatly rejected this. Bricks, thereafter, purported to accept the previous offer of E10 million. 5

c) 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". 10

d) **Carlill v Carbolic Smoke Ball Company**. 10

Total [25 Marks]

Question 3

Critically discuss the four types of agency under our law. Is an agency by necessity accurately termed "agency"?

[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? Discuss all the insurance issues/principles in this case. **[25 Marks]**

Question 5

Write short notes on each of the following:

- a) Suspensive condition 5
- b) Subrogation 5
- c) Duress 5
- d) *Stipulatio alteri* 5
- e) Holder-in-due-course 5

[25 Marks]

Question 6

It has been strongly suggested that The Hire Purchase Act has improved the common law rules and protected the position of a customer/debtor with regard to sales of movables. Critically discuss the common law rules on the passing of ownership and passing of risk, and explain how the Act has made improvements.

[25 Marks]