

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

**EXAMINATION PAPER, JULY 2011
(SUPPLEMENTARY)**

TITLE OF PAPER	:	COMMERCIAL LAW
COURSE CODE	:	AC 202 - IDE
DURATION	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER FOUR QUESTIONS OF YOUR CHOICE.

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

Question 1

- (a) With the aid of the case of **Bank of England v Vagliano Brothers**, explain how the courts determine in the Law of Negotiable Instruments, whether a particular payee is a "fictitious payee". (10 Marks)
- (b) Discuss the legal effect of crossing a cheque generally and adding the words "not negotiable". (10 Marks)
- (c) "To qualify as a holder-in-due-course, one must be a "holder", but not all holders qualify to be holders in due course." Discuss. (5Marks)

(25 Marks)

Question 2 (5 Marks each)

- a) With the aid of case law, discuss the requirement that an aggrieved party must minimize his loss.
- b) Is breach of promise to marry equivalent to breach of contract? Explain your answer by, firstly providing an example of how it would occur, if at all, and secondly, state what the exception is.
- c) With the aid of case law, discuss the sale of a non-existent thing.
- d) With the aid of case law, discuss the duty of agent to give *uberrima fides*.
- e) Provide the facts and legal analysis of the case of *Donoghue v Stevenson*.

[25 Marks]

Question 3

A company, vested with legal personality, is a fungible and cannot exist forever. Critically discuss the dissolution of a company.

[25 Marks]

Question 4

Write short notes on the following:

- a) Implied Agency 5
- b) Salvage 5
- c) Undue Influence 5
- d) Negotiability 5
- e) Insurable Interest 5

[25 Marks]

Question 5

Critically discuss breach of contract under our law.

[25 Marks]

Question 6

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 (cases and illustrations) on offer and acceptance, critically discuss the probable outcome of the suit.

[25 Marks]