

UNIVERSITY OF SWAZILAND
DEPARTMENT OF ACCOUNTING
AC 102 MAIN EXAM PAPER

Programme of Study	:	Diploma in Commerce II F/T & B. Ed. II
Title of Paper	:	Commercial Law I
Course Code	:	AC 102
Time Allowed	:	3 Hours

INSTRUCTIONS:

1. Total Number of Questions on this paper is eight (8).
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 whole town. He sold the business to Masuku and Jele 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 direct competition with Masuku. Masuku has sued to obtain an interdict against Jele.

First discuss the legal issues and advise Jele. Then provide a reasoned answer stating whether the interdict should be granted?

[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

(a) In the law of construction contracts, it is a general rule that when the employer issues out a notice / advert inviting tenders, he / she is not making 'an offer' but merely inviting offers from contractors. Discuss the basis of this legal principle and support your discussion by referring to applicable cases.

[20 Marks]

(b) Provide a reasoned answer as to whether or not a letter of intent addressed to the contractor from the employer constitutes an 'acceptance.'

[5 Marks]

[TOTAL: 25 Marks]

QUESTION 3

With specific reference to the case of *MSC Depots Ltd v W K Construction (Pty) LTD* [2011] ZASCA 115, discuss the liability of the builder for defects in construction.

[25 MARKS]

QUESTION 4

- (a) Define the meaning of “ADR” and describe its processes. [10 Marks]
- (b) What was the ruling on custom as a source of law in the case of *Van Breda v Jacobs* 1921 AD 330? [5 Marks]
- (c) State and briefly describe the essentials or prerequisites of a binding contract. [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 5

Zoliswa owns and runs a very successful business trading in a wide variety of household appliances at Fairview, Manzini, under the name “Best Electric.” Yoliswa, a Fairview resident and next door neighbour to Zoliswa, brings to Zoliswa’s shop a used refrigerator and makes a request that Zoliswa obtain some offers for the sale of the fridge, and to then inform her if there are any. Zoliswa placed this fridge in the shop together with other refrigerators. During one of the busy days Zoliswa sold the fridge to Xoliswa for E1000, 00 in the ordinary course of business without Yoliswa’s knowledge.

Yoliswa is gravely disappointed by the price, and convinces herself that because of her lack of knowledge of the terms of the transaction as owner when it took place, Xoliswa had not acquired ownership. Yoliswa now wishes to claim back possession of the fridge from the buyer (Xoliswa) and return the purchase price to her. Xoliswa argues that ownership had passed to her, this being a legitimate transaction.

Referring to applicable rules and principles, advise Yoliswa and Xoliswa of the legal position in this matter.

[25 MARKS]

QUESTION 6

- (a) When is an estate agent entitled to claim commission for the sale of property? [5 Marks]
- (b) What is the effect of a contract entered into by an agent who does not disclose the fact that he / she is acting on behalf of a principal? [5 Marks]
- (c) Discuss the various methods of formation of agency. [15 Marks]

[TOTAL 25 MARKS]

QUESTION 7

On Monday, Sarah sells her motor vehicle to Benny for E5 000. They agree that Benny will pay Sarah immediately, but Sarah will only deliver the vehicle to Benny on Thursday. On Wednesday, lightning destroys the vehicle while parked outside Sarah's house. Discuss the legal position of each.

Would your answer be any different if Sarah had failed to deliver the car on Thursday, and the car had been struck by lightning outside her house on Saturday?

[25 MARKS]

QUESTION 8

With reference to case law, where applicable, differentiate between:

- | | |
|---|-----------|
| (A) A sale and a pledge | [4 Marks] |
| (B) A contract of sale and a Lease agreement. | [5 Marks] |
| (C) Void, voidable and unenforceable contacts. | [6 Marks] |
| (D) An offer and an expression of willingness to do business. | [5 Marks] |
| (E) <i>Ratio decidendi</i> and <i>Obiter dictum</i> . | [5 Marks] |

[TOTAL 25 MARKS]

END OF PAPER