

**UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF ACCOUNTING**

**EXAMINATION PAPER, 2013
(MAIN)**

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| TITLE OF PAPER | : | COMMERCIAL LAW |
| COURSE CODE | : | AC 102 |
| DURATION | : | 3 HOURS |
| MARKS ALLOCATED | : | 100 MARKS |
| INSTRUCTIONS | : | ANSWER QUESTION <u>ONE</u> 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

a) 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. **15**

b) It is 9pm and Siphso has just disembarked from a kombi next to the University Campus gate when he hears the groans of someone nearby. He rushes to the scene and sees a pale and dying Joe, vomiting and writhing in extreme pain on the lawn. Siphso immediately calls a meter taxi instead of the free Campus kombi reasoning that it would delay. When the meter-taxi arrives, Siphso instructs the driver to rush Joe, not to the nearest hospital (Raleigh-Fitkin Memorial), but to the exclusive Medi-Sun Clinic in Ezulwini as he believed Joe would get better treatment there. Siphso signs all the Clinic forms for the treatment. Joe recovers and the Clinic sends the bill to Siphso. Siphso hands both the taxi and Clinic bill to Joe. Joe who refuses to pay arguing that Siphso was not his agent and that he (Siphso) should have used cheaper means. Discuss who would win and why. **10**

[25 Marks]

Question 2 (5 Marks each)

With the aid of appropriate examples, explain the following:

- a) *Nemo dat quod no habeat*
- b) Subsequent impossibility of performance
- c) Subrogation
- d) "holder-in-due course"
- e) undisclosed principal

[25 Marks]

Question 3

Menzi who has been diagnosed with terminal severe lung cancer has been told by his doctor that he only has 4 months to live. Knowing this unfortunate fact, his friend, Sputnik pays him a visit and softly persuades Menzi to sell his supermarket to him (Sputnik) since "he would have no need for it where he was going!". Menzi does as advised by his friend, but after 8 months being alive, he decides to sue Sputnik for cancellation of the contract of sale on the basis that he had been unduly influenced by Sputnik.

Referring to the relevant principle, decide the merits of Menzi's claim

[25 Marks]

Question 4

Gwebu owns a large house in Manzini. He has taken out an insurance policy against fire in respect of the house with "Mbabane All Purpose Company Ltd". At the time he took out the insurance policy, the house was used as a dwelling house for himself and his family.

The previous policy has now expired and Gwebu filled out a fresh proposal form for the renewal of the policy on 10th May 2012. In July 2012, Gwebu's family moved to Vuvulane and Gwebu gave the house to his sister as stokvel

and shebeen. 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 15th November 2012, there was a fire which destroyed the house. Gwebu then sought to recover on the policy but Mbabane All Purpose Insurance Company discovered that the house was in fact being used as a shebeen and beer pub, and repudiated Gwebu's claim.

Gwebu has now retained you to advise him on whether he is entitled to recover on the policy. Discuss and advise. **[25 Marks]**

Question 6

Write an exhaustive essay on the law of letting and hiring.

[25 Marks]