

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN LAW
MAIN EXAMINATION PAPER DECEMBER 2012

TITLE OF PAPER : COMMERCIAL LAW

COURSE CODE : AC 201

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS

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

QUESTION 1

Give the five essential elements that have to be present for a contract to be valid and binding in law between two or more competent parties.

(25 Marks)

QUESTION 2

A. State the facts, legal arguments and the court's ruling in the case of *Bloom v American Swiss Watch Co. 1915 AD 100*. (15 Marks)

B. Differentiate between *protestative conditions* and *casual conditions*. (10 Marks)

(25 Marks)

QUESTION 3

State five factors that may render a contract voidable.

(25 Marks)

QUESTION 4

A. What are the legal positions in the following situations where a minor has entered into a contract?

- i) Neither party has performed his obligation (5 Marks)
- ii) The minor has performed and the major has not (5 Marks)
- iii) The major has performed and the minor has not (5 Marks)

B. What are the facts and the legal position that was spelt out in the case of *Louw v MJ & H Trust (Pty) Ltd*. (10 Marks)

(25 Marks)

QUESTION 5

What is a marriage in community of property? What elements constitute it and under what circumstances is a woman married in such a marital regime exempted from her inability to contract?

(25 Marks)

QUESTION 6

Discuss and explain the following examples of breach of contract:

- a) *Mora debitoris* (5 Marks)
- b) *Mora creditoris* (5 Marks)
- c) Non-performance (5 Marks)
- d) Repudiation (5 Marks)
- e) Self-induced impossibility of performance (5 Marks)

(25 Marks)

QUESTION 7

A. Explain and illustrate how foreseeable loss is different from restitutionary damages.

(20 Marks)

B. What is a penalty under the law of contract?

(5 Marks)

(25 Marks)