

**UNIVERSITY OF SWAZILAND**

**FACULTY OF COMMERCE**

**SUPPLEMENTARY EXAMINATION PAPER JULY 2013**

**TITLE OF PAPER : COMMERCIAL LAW II**

**COURSE CODE : IDE- AC 204**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS :**

- (a) THE PAPER CONSISTS OF FIVE QUESTIONS**
- (b) ANSWER FOUR QUESTIONS ONLY**
- (c) QUESTION ONE IS COMPULSORY**
- (d) REFERENCE TO CASE LAW AND ANY OTHER LEGAL AUTHORITY IS A MUST WHERE APPLICABLE**

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**QUESTION 1 [COMPULSORY]**

Julius Dubula Dlamini and Beyoncé Mkhonta are roommates, having known each other since Law school. They do not have a romantic relationship. Julius owns the home in which the two have lived for the past 10 years. Julius pays all main expenses related to the home, the mortgage, taxes and utilities (gas and electric). Beyoncé pays for all food and telephone expenses. Julius has a 21 year old child from a one night stand relationship with J-LO Fakudze. The child, Joey does not reside at the home and visits occasionally.

There was no written lease agreement between Julius and Beyoncé, however one night after both had been drinking heavily on the couch, Julius convinced Beyoncé to sign an agreement wherein she agreed that she would never make a claim against Julius or any other member of his family for loss suffered as a result of damage occasioned by them to her personal property during her occupation of the home. This agreement was signed over 5 years ago.

One winter evening, Joey, while visiting, decides to grill French pork for dinner. Joey had just come back from his studies in Paris and had a craving for French pork. The temperature was minus twenty (-20) degrees Celsius outside, so he brought the gas grill into the dining room to cook the Pork.

After Joey starts the grill and puts the pork on, the telephone rings. His University sweetheart is on the phone. Joey begins chatting away, completely forgetting about the meat on the grill in the dining room. Unfortunately, before Joey remembers, the grill sets the dining room curtains on fire. The fire spreads and completely destroys the home. After the fire, Joey apologizes profusely to his father and Beyoncé for his negligence.

Two years before the fire, Beyoncé had taken a standard insurance policy of immovable property insurance with NO NONSENSE INSURANCE COMPANY on the home naming herself as the insured. Beyoncé had also taken a standard movable insurance policy for all the combined household property in the house naming herself as the insured. Joey had also taken out an immovable property Insurance Policy on the house from a French Insurer company called Le Monde Insurance naming himself as the insured. He arranged this policy when on his previous visit to Swaziland he mistakenly discovered his father's **Testamentary Document** which clearly stated that the property will be his when the father dies.

Beyoncé has made a claim against NO NONSENSE INSURANCE COMPANY under both the immovable and movable property insurance policies as a result of the loss occasioned by the fire. Joey has also instituted a claim against Le Monde Insurance Company under his immovable property insurance policy. Both insurance companies have decided to deny their claims and the Insurance Adjudicator has referred the matter to the Swaziland High Court for determination. Discuss the remedies and possible defences of **ALL THE FOUR PARTIES UNDER INSURANCE LAW.** Discuss any reasonable justifications the parties may assert, even if you believe the position would be defeated in a trial.

[TOTAL: 40 MARKS]

### **QUESTION 2**

(a) Discuss the main similarities and differences between a Pledge and a Notarial Bond as forms of security.

[5MARKS]

(b) With the aid of the South African case of **Mapenduka v Ashington 1919 A.D. 343**; discuss the nature of a *Pactum Commissorium* having due regard to the rights of a pledgee and make a clear distinction between a *Pactum Commissorium* and a *Parate executie*.

[10 MARKS]

(c) Discuss the nature and operation a landlord's hypothec and any possible limitation therein.

[5MARKS]

[TOTAL: 20 MARKS]

### **QUESTION 3**

The Board of DEF Ltd. is considering an expansion of the Company's activities but is not willing to take on significant additional debt by engaging new employees owing to its concerns about possible future economic conditions. The existing shareholders are not in a position to provide additional equity funding at this point, nor are they willing to countenance their existing interest in the Company being diluted by way of sale of shares to outside investors. Accordingly, the Board has decided to give effect to its expansion plans by appointing a network of agents. You are required to prepare a report to the Board clearly dealing with the following issues:

- (i) The different ways in which an agent's authority can be classified under Swazi law.
- (ii) The conduct before a principal can be held to be bound through the doctrine of Estoppel for the conduct of an agent.
- (iii) The conditions that must be met before a principal can ratify an agent's actions.
- (iv) The distinction between a disclosed and an undisclosed agency and the effect thereof.
- (v) All the ways in which an agency relationship may be terminated.

[20MARKS]

**QUESTION 4**

(a) Briefly discuss the main similarities and differences between Sequestration and Winding Up in relation to Insolvency.

[5 MARKS]

(b) Discuss the meaning of the term Insolvency, describing the procedures involved in declaring a legal and natural person insolvent.

[10 MARKS]

(c) Discuss the legal handicaps that attach to both a natural and legal person upon being declared insolvent.

[5MARKS]

[TOTAL: 20 MARKS]

**QUESTION 5**

(a) With the illustrative aid of the cases of Amin v. Ebrahim 1926 N.P.D and Heermans Supermarket (Pty) Ltd v. Mona Road Investments (Pty) Ltd 1975 (4) SA 391 (D) discuss the duty of a lessor to guarantee the lessee against defects in the *res* being let out.

[10 MARKS]

(b) Discuss the maxim *HuurGaatVoor Koop* in relation to a lease agreement between a land lord and a tenant.

[5 MARKS]

(c) Briefly list all the grounds upon which a lease can be terminated.

[5 MARKS]

[TOTAL: 20 MARKS]