

**UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION  
DIPLOMA IN COMMERCE  
MAIN EXAMINATION PAPER – MAY 2014**

Title of Paper: Commercial Law II

Course Code: AC 204

Time Allowed: Three (3) Hours

**INSTRUCTIONS:**

1. The total number of questions in this paper is five (5)
2. Answer any four (4) questions
3. Each question carries 25 marks
4. In answering your questions, note that the quality of the content, proper use of case law authorities (where applicable), clarity of expression and legibility of handwriting are absolutely essential. Presentation is of essence.
5. Begin each question in a new page.

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

**Question 1**

- [A] With reference to case law, where applicable discuss 5 (five) prerequisites that must have been complied with for agency to be created by ratification. (15 marks)
- [B] With reference to case law, where applicable, discuss the 3 (three) requirements for Agency by Estoppel. (10 marks)

[25 marks]

**Question 2**

With reference to case law, discuss the concept of 'Legal personality' of a Company.

[25 marks]

**Question 3**

- A) Briefly discuss the three (3) forms of security that give the creditor real rights in a *res*. (15 marks)
- B) Carefully and critically analyze the *Mapenduka v Ashington 1919 A.D. 343* case in relation to the *Pactum Commissorium* clause.

(10 marks)

[25 marks]

**Question 4**

With reference to case law, clearly and carefully discuss the principle of *insurable interest* in insurance contracts.

[25 marks]

**Question 5**

A fast growing construction company Mangena Construction based in the City Centre in Mbabane, Mangena Construction has recently won a tender from the Ministry of Justice to build and rehabilitate the Magistrate Court in Nhlanguano, a tender worth E18.5 Million.

The tender is signed and construction begins on the 1<sup>st</sup> February 2014. One of the clauses in the contract allows the Company to subcontract any other specialized services in fulfilling its obligations with the Ministry of Justice. In line with the clause to subcontract, Mangena Construction proceeds to engage an independent contractor, Dem Dem Electronics to specifically provide and install special electronic equipment for the recording of all cases in the courtrooms.

While Dem Dem Electronics continues to execute its mandate, Mangena negligently fails to give Dem Dem Electronics a clear and proper instruction regarding the quality of the machines that have been requested by the Ministry to ensure perfect functioning of the equipment, and as such Dem Dem provide sub standard equipment with many faults and glitches. And while Dem Dem executes its mandate on site, Mangena Construction is evidently seen to be interfering with the work Dem Dem is doing, daily giving instructions of how and where equipment should be set up.

During one of the site inspections, S'khaleni one of the laborers of Mangena Construction while pushing a wheelbarrow full of concrete cement, trips and the cement spills over to the floor below which is being inspected, and the wheelbarrow crashes on Wendy an official from the Ministry. While running for cover from the evident chaos and danger, Armstrong another official, from the ministry, is electrocuted by electronic cables installed by Dem Dem Electronics.

The PS in the Ministry requests you as the commercial law expert to advise them on the legal issues raised by these events and for any course of action they may pursue on behalf of Wendy and Armstrong.

**[25 marks]**