

**UNIVERSITY OF SWAZILAND  
INSTITUTE OF DISTANCE EDUCATION  
DIPLOMA IN COMMERCE  
SUPPLEMENTARY EXAMINATION PAPER – JULY 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 PERMISSSION HAS BEEN  
GRANTED BY THE INVIGILATOR.**

**Question 1**

[A] Briefly define and/or discuss the following contractual terms;

- i) Agency (5 marks)
- ii) Estoppel (5 marks)
- iii) Lien (5 marks)

[B] Clearly distinguish by definition the following contractual terms:

- i) Insurance and Assurance (5 marks)
- ii) Agent in an agency relationship and Servant in the Master/Servant relationship (5 marks)

[25 marks]

**Question 2**

You have been employed as the Chief Financial Officer (CFO) of Inathi Pty Ltd, a company that has various branches in the Kingdom of Swaziland. Your Deputy Assistant is Kiki Moore who amongst her duties is responsible for supervising all internal auditing of the various branches in the Kingdom. Together with her responsibilities she has the authority and privilege to drive and use the Company car for executing her duties accordingly.

The Head Office in Mababne instructs Kiki to go and supervise an audit in one of the branches in Simunye, on her way to Simunye she receives good news from her childhood friend that she has given birth to baby girl at Siteki Hospital. Seeing that she will have enough time, Kiki all excited decides to make a stop first at the Hospital as it is along her way to Simunye and go see her friend to congratulate her accordingly. As Kiki turns into the Hospital she causes an accident and badly damages an on coming vehicle belonging to Mr. Samuels.

Mr. Samuels sends a letter of demand to your Company for the damages caused on his motor vehicle in the total amount of E45 000.00 (Forty Five Thousand Emalangeni) after being advised that an employee of the Company caused the accident.

The Company CEO directs the letter to you for an opinion on the Company's liability.

**[25 marks]**

### **Question 3**

- A) Agency places a duty of utmost good faith i.e. *uberrima fides* on the agent. With reference to case law carefully explain this legal principle.

(15 marks)

- B) Carefully and critically discuss the duty of disclosure expected on the insured by the insurer.

(10 marks)

**[25 marks]**

### **Question 4**

- [A] Define and name negotiable instruments.

(10 marks)

- [B] Identify any five characteristics sufficient to prove that a debtor has committed an act of insolvency.

(10 marks)

[C] Define a partnership.

(5 marks)

**[25 marks]**

**Question 5**

[A] List the types of companies in Swaziland.

(10 marks)

[B] What are the three (3) requirements for agency by estoppel as decided in the *Monzali v Smith* case?

(15 marks)

**[25 marks]**