

**UNIVERSITY OF SWAZILAND**  
**INSTITUTE OF DISTANCE EDUCATION**  
**BACHELOR OF EDUCATION - COMMERCE**  
**SUPPLEMENTARY EXAMINATION PAPER – JULY 2015**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>COMMERCIAL LAW I</b>
<b>COURSE CODE</b>	<b>:</b>	<b>IDE-AC201</b>
<b>TIME</b>	<b>:</b>	<b>THREE (3) HOURS</b>
<b>INSTRUCTIONS</b>	<b>:</b>	<b>1. <u>ANSWER QUESTION 1</u></b>  <b>(QUESTION 1 CARRIES 40 MARKS)</b>  <b><u>AND</u></b>  <b>2. ANY OTHER TWO QUESTIONS</b>  <b>(QUESTIONS 2-6 CARRY 30 MARKS EACH)</b>
<b>TOTAL MARKS</b>	<b>:</b>	<b>100</b>

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

### QUESTION 1

- (a) Define commercial law. (2)
  
- (b) Name and discuss five (5) of the essential elements of a valid contract. (10)
  
- (c) Discuss four characteristic features of a contract. (8)
  
- (d) Distinguish between void and voidable contracts. (4)
  
- (e) What do you understand by the following:
  - (i) Lapse of an offer (2)
  - (ii) Revocation of an offer (2)
  - (iii) Rejection of an offer (2)
  
- (d) All contracts are agreements but not all agreements are contracts. Discuss. (4)
  
- (e) Distinguish between essential, natural and incidental terms of a contract. (6)

## QUESTION 2

- (a) Factors which may influence or induce a party's state of mind when entering into a contract are many and varied and most of them have no effect in law. However there are a number of instances where the factor which induced agreement is relevant.
- (i) Discuss any three factors that may induce agreement. (6)
  - (ii) What are the remedies available to the induced party in all three factors in (i) above? (3)
- (b) "The object of a contract must be lawful." Describe two (2) ways in which the object of a contract may be unlawful. (4)
- (c) List five (5) ways in which a contractual obligation may be terminated. (5)
- (d) Describe the contractual capacity of a woman married in community of property. (5)
- (e) What is meant by *Stipulatio Alteri*? Give an example. (2)
- (f) Define "breach of contract". (1)
- (g) What must an aggrieved party prove in order to succeed in a claim for damages? (4)

### QUESTION 3

- (a) Discuss the four(4) ways in which third parties may acquire rights and/or incur obligations under a contract to which they were not parties. (12)
- (b) When a minor enters into a contract without his guardian's consent by whom and when that contract can be set aside. (2)
- (c) What is the effect of a minor's emancipation? (2)
- (d) What is meant when it is said that "time is of the essence of the contract"? To what circumstances will time be deemed to be of the essence even though time of performance was not fixed? (6)
- (e) Where no date is fixed for performance in a contract, in what way can the creditor place the debtor in Mora? (2)
- (h) (i) Distinguish between hire-purchase and an instalment sale agreement. (4)  
(ii) distinguish between an option and a right of pre-emption. (4)

### QUESTION 4

- (a) Differentiate between joint liability and joint and several liability. Give an example. (3)
- (b) What considerations must a court take into account before enforcing or otherwise a restraint of trade agreement? Support your answer with case law. (10)

- (c) X sells goods to Y on the 10<sup>th</sup> January to be delivered to B on the 30<sup>th</sup> January. On the 20<sup>th</sup> January a fire destroys X's warehouse and all its contents.
- (i) What liability, if any does X have towards Y? (2)
  - (ii) If X had failed to deliver the goods on the 30<sup>th</sup> January and the fire had taken place on the 5<sup>th</sup> February, would your answer be different from the one in (i) above? (2)
- (d) What is meant by the saying that "the cessionary steps into the shoes of the cedent?" (2)
- (e) Distinguish between cession outright and cession in security of a debt. (4)
- (f) Where no date is fixed for performance in a contract, in what way can a creditor place the debtor in mora? (2)
- (g) What is meant when it is said that "time is of the essence of the contract?" (3)
- (h) Define damages. (2)

#### QUESTION 5

- (a) Critically discuss the case of **Tel Peda Investigation Bureau (Pty) Ltd v V. Van Zyl** in relation to contracts entered inter *absentes*. (10)
- (b) Critically discuss the case of **Edelstein v Edelstein** in relation to the entering into contracts by minors without assistance. (10)

(c) Briefly outline the essentials of a contract of sale. (6)

(d) Name and discuss the two (2) duties of a buyer in a contract of sale. (4)

**\*\*\*GOOD LUCK\*\*\***