

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DIPLOMA IN COMMERCE
EXAMINATION PAPER – MAY 2016
(MAIN)

TITLE OF PAPER:	COMMERCIAL LAW
COURSE CODE:	AC 102
TIME ALLOWED:	THREE (3) HOURS
MARKS ALLOCATED:	100 MARKS

INSTRUCTIONS:

1. Answer **Question 1 (ONE) which is compulsory**, & any three (3) questions of your choice.
2. Each question carries 25 marks
3. 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.
4. Begin each question in a new page.

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

Question 1

Nkebs inherited an old coalmine plant at Maloma from his one-time rich father. Since Nkebs had no knowledge and skill of operating a mine he decided he would lease it to his friend Mehlo who just completed engineering studies to run and operate the coalmine. Nkebs made it clear to Mehlo that, he would lease the mine to him on two conditions: Firstly, he was going to have a 30% share of the profits made in the operations of the mine; and Secondly, to ensure that he is not cheated from the profits, he should be made a co-signatory in the mine's FNB account. When they signed the lease agreement with the conditions, Nkebs made a toast and said to Mehlo, "Good luck as you operate the mine my friend, make us some money!!"

The first two years of operation yielded positive and excellent profits which Nkebs and Mehlo enjoyed. However, towards the end of the fourth year, the market took a down turn and things did not go well at the mine. Mehlo had bought on credit special refinery chemicals from Mantolo Technic Solutions (Pty) Ltd. in Mbabane for E3.5Million. Due to the industry down turn, Mehlo failed to keep up with his payments at Mantolo Technic Solutions (Pty) Ltd, and was soon in arrears of E1.8Million.

When the Solutions Company made demand for the arrear payments and the remaining balance due, Mehlo said he was not liable as he was not the owner of the mine, he merely rented the facility. He then directed the Solutions Company to make its demand and sue Nkebs the owner of the mine.

Nkebs has approached you to advise him of his prospects in avoiding liability. Advise him accordingly of all the legal issues presented by this matter.

[25 marks]

Question 2

[A]

List the 4 conditions that must be satisfied before a party may claim for vicarious liability.

(8 marks)

[B]

State any three (3) exceptions that could make a master liable for the delicts of an independent contractor. (17 marks)

[25 marks]

Question 3

On a Sunday afternoon while sitting on her door step and enjoying the sun, Mrs. Jones hears on the radio that the new beauty treatment store 'Dream Makers' in town is offering E5, 000.00 to any one who would use their new facial product and get a bad rash reaction from using their well tested and approved product. Mrs. Jones rushes there first thing Monday morning buys the product and starts using it. Three weeks later using the product, Mrs. Jones develops a bad rash.

She has approached you for advice on her rights based on the issues above.

[25 marks]

Question 4

[A] Write short notes on the three (3) factors that may render a contract voidable.

(15 marks)

[B] Carefully and clearly distinguish between a Right of pre-emption and an Option agreement.

(10 marks)

[25 marks]

Question 5

Write short notes on the following contractual terms:

i) Child emancipation (5 marks)

ii) Counter Offer (5 marks)

- iii) *Mora Creditoris* (5 marks)
- iv) Cession (5 marks)
- v) Lien (5 marks)

[25 marks]