

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF EDUCATION
MAIN EXAMINATION PAPER – DECEMBER 2015

TITLE OF PAPER : **COMMERCIAL LAW 1**

COURSE CODE : **IDE-AC 201**

TIME : **THREE (3) HOURS**

INSTRUCTIONS : 1. **ANSWER QUESTION 1**
(QUESTION 1 CARRIES 40 MARKS)

AND

2. **ANY OTHER TWO QUESTIONS.**
(QUESTIONS 2-5 CARRY 30 MARKS EACH)

TOTAL MARKS : **100**

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

QUESTION 1

- (a) Pick 'n Pay places posters outside the store advertising Sunlight at a very low price. Jack enters the store and buys 10 x Sunlight and leaves the shop. He comes back two (2) hours later and asks to buy 10 more Sunlight but the store owner refuses to sell him more, his reason being that he wants to supply as many different customers as possible. Jack takes the store to court for breach of contract.

What are the chances of Jack succeeding in his claim for breach of contract in court? State your reasons. (5)

- (b) Name and discuss five (5) of the essential elements of a valid contract. (10)
- (c) 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)
- (f) "The object of a contract must be lawful." Describe two (2) ways in which the object of a contract may be unlawful. (4)
- (g) List five (5) ways in which a contractual obligation may be terminated. (5)

QUESTION 2

- (a) A contract is a lawful agreement which will give rise to rights and obligations. If a party does not fulfill his contractual obligation, or has given information to the other party that he will not perform his duty as mentioned in the contract, or if by his action and conduct he seems to be unable to perform the contract, he is said to be in breach of that contract.

What is your understanding of breach of contract and what remedies available to the injured party in the case of a breach of a material term of a contract? Discuss in detail. (15)

- (b) Discuss three ways in which breach of contract may occur. (6)
- (c) What must an aggrieved party prove in order to succeed in a claim for damages? (4)
- (d) X sells goods to Y on the 10th January to be delivered to B on the 30th January. On the 20th 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 30th January and the fire had taken place on the 5th February, would your answer be different from the one in (i) above? (2)
- (e) What is meant by *Stipulatio Alteri*? Give an example. (1)

QUESTION 3

- (a) What is the effect of misrepresentation on contracts and what choice(s) does an innocent party have if he/she discovers any misrepresentation. (2)

- (b) X offers to sell Y his watch for E 1000.00. Y tells X he is not interested. Thereupon X tells Y that the watch is made of pure gold when in fact it is made of copper. Y then becomes interested and agrees to buy the watch.
 - (i) What type of misrepresentation is presented in the above scenario? (2)

- (c) When a minor enters into a contract without his guardian's consent by whom and when can that contract be set aside. (2)

- (d) What is the effect of a minor's emancipation? (2)

- (e) Describe the contractual capacity of a woman married in community of property. (5)

- (f) One of the duties of a seller is to guarantee the buyer against eviction. Explain what is meant by this duty, and what a buyer must do when threatened with eviction. (15)

- (g) What do you understand by breach of contract? (2)

QUESTION 4

- (a) Differentiate between joint liability and joint and several liability. Give an example. (3)
- (b) What differentiates a breach of promise to marry and a breach of contract? (2)
- (c) What considerations must a court take into account before enforcing or otherwise a restraint of trade agreement? Support your answer with case law. (10)
- (d) X sells goods to Y on the 10th January to be delivered to B on the 30th January. On the 20th 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 30th January and the fire had taken place on the 5th February, would your answer be different from the one in (i) above? (2)
- (b) What is meant by the saying that "the cessionary steps into the shoes of the cedent?" (2)
- (c) Distinguish between cession outright and cession in security of a debt. (4)

- (d) (i) Distinguish between hire-purchase and an instalment sale agreement. (4)
- (ii) What law governs hire purchase in Swaziland? (1)

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