

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF EDUCATION
MAIN EXAMINATION PAPER – MAY 2016

TITLE OF PAPER : **COMMERCIAL LAW II**

COURSE CODE : **IDE-AC 204**

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) Describe 5 circumstances under which a Master would be held liable for the wrongful acts of an independent contractor (10)
- (b) Name and discuss two (2) principles / essentials of insurance. Illustrate by way of example. (10)
- (c) X wants to buy a stove but before he does so, his son Y decides to buy the stove on credit from Bradlows on behalf of his father. X is pleased that Y did this for him despite the fact that he had not asked Y to do it and he proceeds to pay Bradlows the full amount due for the stove.
- (i) What type of agency is created in the above scenario? (2)
- (ii) Name four (4) prerequisites for the creation of the type of agency mentioned in your answer to (a) above. (8)
- (d) Anyone dealing with a company must acquaint himself with the company's regulations. This rule, however, is subject to the Turquand Rule. With reference to case law, explain the meaning of the Turquand Rule. (5)
- (e) List five (5) ways in which a partnership may be terminated. (5)

QUESTION 2

- (a) Rose lets business premises to Jet Stores for a period of two (2) years for a rental of E 15,000-00 per month.
- (i) What is the legal status of the lease agreement at the expiry of the two (2) years if Jet Stores continues to occupy the premises and Rose accepts the rent without either party saying anything? (2)
- (ii) What is the considered length of the lease referred to in 2 above in these circumstances? (4)

(iii) Discuss what is meant by the maxim "huur gaat voor koop" (hire goes before sale) and to what type(s) of lease(s) does it apply. (4)

(iv) Distinguish between the Lessor's duty to the Lessee to grant occupation and the duty to give *vacuo possessio*. (4)

(b)

(i) Illustrate the doctrine of subrogation and state its effect on insurance premiums. (6)

(ii) State the requirements that must be met for a Master/Employer to be held liable for wrongful acts of his servants/employees. (8)

(iii) What is an independent contractor and what is the difference between an independent contractor and an employee/servant? (2)

QUESTION 3

(a) Differentiate between the creation of agency by estoppel and the creation of agency by reasonable confidence aroused in the minds of third parties. (6)

(b) What is meant by the doctrine of the undisclosed principal and what are the remedies of the third party if there is breach of a contract to which the Principal was not disclosed. (4)

(c) Define a Pledge and give an example. (2)

(d) Distinguish between pledges and mortgages? (10)

(e) List five (5) ways in which agency may be terminated. (5)

(f) Differentiate between a debtor-creditor lien and an enrichment lien. (3)

QUESTION 4

- (a) Name and describe 4 alternatives that are available to a person/debtor being pressed for payment of his debts to prevent his estate from compulsory sequestration. (12)
- (b) What are the steps involved in an application for a compulsory sequestration and what are the essentials to be established before such an order is granted? (15)
- (c) Name three (3) duties of a trustee in an insolvent's estate. (3)

QUESTION 5

- (a) "Insurance is a contract of good faith." Explain what the principle of good faith means in relation to insurance contracts. (5)
- (b) What is the effect of signing a warranty clause on an Insurance Proposal Form? Support your answer with case law. (10)
- (c) "Insurable interest" is a necessary element of the contract of insurance. What does this statement mean? In your answer make reference to case law. (10)
- (d) Explain the principle of "pooling of risks." (3)
- (e) Distinguish between indemnity and non-indemnity insurance. (2)

*****GOOD LUCK*****