

UNIVERSITY OF SWAZILAND
DEPARTMENT OF ACCOUNTING
LAW 213 MAIN EXAM PAPER

Programme of Study : **Bachelor of Commerce II F/T**

Title of Paper : **Commercial Law**

Time Allowed : **3 Hours**

Examiner : **Dr. M.N Shongwe**

INSTRUCTIONS:

1. Answer any Four (4) Questions.
2. In answering any question, note that the quality of the content, use of case law, clarity of expression and legibility of handwriting are absolutely essential.
3. Begin each question on a new page.

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

- A. During a heavy drinking session one evening Musa, a major agrees to sell his motor vehicle to Brian for E5000,00. The next day when Brian wants to pay and take delivery of the car, Musa tells him that he was drunk when he entered into the agreement and did not know what he was doing. Musa refuses to go through with the sale. Brian institutes action against him in the Manzini Magistrate's Court of Swaziland, claiming delivery of the car against payment of the price. From the evidence the judge finds that Musa was very drunk at the time that he concluded the agreement. The Judge must now decide, as a question of law, whether Musa is bound by the agreement which he entered into while drunk. On consulting with the authorities, the judge finds that:
- i. There is a decision of the full bench of the High Court of Swaziland in which it was held that a party to a contract was bound by the contract even though he was drunk at the time when the contract was concluded;
 - ii. There are two decisions handed down by two Judges sitting alone, one in the Mbabane Magistrates Court and the other in the High Court of Swaziland, in which it was held that a party to a contract is not bound if he was under the influence of alcohol when it was concluded; and
 - iii. There is a decision of the Supreme Court of Appeal in which it was found on the evidence that the party concerned was not drunk at the time when he concluded the contract and was therefore not bound by it. However, the Supreme Court of Appeal in giving judgment said that if it was found that he was drunk then he would not have been bound.

From your knowledge of the doctrine of judicial precedent and principles of contract, what do you think will be the finding of the judge of the Manzini Magistrate's Court?

[15 Marks]

- B. State and briefly discuss the seven essential elements of a valid contract.

[10 Marks]

[Total: 25 Marks]

QUESTION 2

Godlintjintji Simelane is 16 years old and lives in Msahweni with his parents. Godlintjintji has just finished his training as a plumber and has a part-time job. He uses his savings to buy a motorcycle from Ranjit, a local shop owner in terms of an installment agreement. His father did not approve of the purchase, but his mother thought it was a nice bike. A week after the purchase, Godlintjintji collides with a tree and the bike gets destroyed completely. Godlintjintji now refuses to pay the balance of E10 000, which he still owes on the bike. Ranjit wants to sue him. Fully discuss the law applicable to this type of agreement, as well as the legal position of both parties.

[25 MARKS]

QUESTION 3

Motsa went to Patel's showroom, and pointed to a dark-grey Mercedes C230, 2002 model, priced at E100,000. Patel said to him, "Right choice! Awesome machine! Awesome! Can get you to Cape Town in a day!" Motsa, however, noted some scratches on the driver's door, and asked Patel whether the car had ever been involved in an accident. "Not really... No," Patel replied. "But a second hand car cannot be perfect! Never! He added emphatically.

Motsa then quickly paid, signed a document Patel asked him to, a copy of which he took with him, although he had not read it. That very day, however, the car's steering mechanism and brakes failed, and the car crashed into a shop wall at the Mall in Manzini.

The disappointed Motsa towed the wreck back to Patel's garage, and demanded an immediate refund of the E100,000. Patel pointed to a clause in the contract Motsa had signed. It read thus: "Seller shall not be liable for any warranty, express or implied." Patel also emphasized that the defects had not existed before the sale.

Discuss all legal issues and advise Motsa.

[25 Marks]

QUESTION 4

With reference to case law, discuss what is meant by 'an implied warranty against eviction.' Also explain the defence available to a buyer who is threatened with eviction.

[25 MARKS]

QUESTION 5

Mfeneziyamthoba is a famous politician who does not want a journalist to write negative stories about him, so he hires Phuzumnjonjo to kill the journalist. Mfene pays E10 000 to Phuzumnjonjo who takes the money and thereafter refuses to kill the journalist. Mfene asks for his money back, but Phuzumnjonjo refuses, and demands an extra E20 000 to keep quiet. Mfene approaches you as his legal advisor. He wants to sue Phuzumnjonjo and claim restitution in integrum. Advise Mfene.

[25 MARKS]

QUESTION 6

- (a) Define Law? (3)
- (b) What are the 4 major sources of law in Swaziland in order of Primacy? (4)
- (c) Define a contract of sale and state the four essential elements. (6)
- (d) Define 'acceptance' as used in the law of Contracts. (3)
- (e) What is fraudulent misrepresentation? (3)
- (f) State and briefly explain the three maxims applicable to illegal agreements. (6)

[25 MARKS]

END OF EXAM