

UNIVERSITY OF SWAZILAND
DEPARTMENT OF ACCOUNTING
LAW 213 SUPPLEMENTARY EXAM PAPER

Programme of Study : **B.Com II F/T**
Title of Paper : **Commercial Law I**
Course Code : **LAW 213**
Time Allowed : **3 Hours**

INSTRUCTIONS:

1. Answer any four (4) Questions
2. Each question carries 25 Marks.
3. 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.
4. Begin each question on a new page.

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

QUESTION 1

Discuss in detail the seven essential elements of a valid contract, and refer to applicable case law.

[25 MARKS]

QUESTION 2

With reference to case law, where applicable, differentiate between:

- (A) A sale and a pledge [4 Marks]
- (B) A contract of sale and a Lease agreement. [5 Marks]
- (C) Void, voidable and unenforceable contacts. [6 Marks]
- (D) An offer and an expression of willingness to do business. [5 Marks]
- (E) *Ratio decidendi* and *Obiter dictum*. [5 Marks]

[TOTAL: 25 Marks]

QUESTION 3

- (a) How does law differ from other forms of social control such as morality and religion? [5 Marks]
- (b) Explain the status of the Constitution in the Swaziland legal system with reference to authority. [5 Marks]
- (c) Define judicial precedent and describe the circumstances that may lead to judge-made law. [15 Marks]

[TOTAL: 25 MARKS]

QUESTION 4

Zoliswa owns and runs a very successful business trading in a wide variety of household appliances at Fairview, Manzini, under the name "Best Electric." Yoliswa, a Fairview resident and next door neighbour to Zoliswa, brings to Zoliswa's shop a used refrigerator and makes a request that Zoliswa obtain some offers for the sale of the fridge, and to then inform her if there are any. Zoliswa placed this fridge in the shop together with other refrigerators. During one of the busy days Zoliswa sold the fridge to Xoliswa for E1000, 00 in the ordinary course of business without Yoliswa's knowledge.

Yoliswa is gravely disappointed by the price, and convinces herself that because of her lack of knowledge of the terms of the transaction as owner when it took place, Xoliswa had not acquired ownership. Yoliswa now wishes to claim back possession of the fridge from the buyer (Xoliswa) and return the purchase price to her. Xoliswa argues that ownership had passed to her, this being a legitimate transaction.

Referring to applicable legal principles and case law, advise Yoliswa and Xoliswa of the legal position in this matter.

[25 MARKS]

QUESTION 5

Write an essay in which you discuss the concept of risk in a contract of sale and the factors relevant to the passing of risk.

[25 MARKS]

QUESTION 6

On Monday, Sarah sells her motor vehicle to Benny for E5 000. They agree that Benny will pay Sarah immediately, but Sarah will only deliver the vehicle to Benny on Thursday. On Wednesday, lightning destroys the vehicle while parked outside Sarah's house. Discuss the legal position of each.

Would your answer be any different if Sarah had failed to deliver the car on Thursday, and the car had been struck by lightning outside her house on Saturday?

[25 MARKS]

END OF PAPER