



UNIVERSITY OF ESWATINI

SEMESTER II **RE-SIT** EXAMINATION PAPER, JULY 2019

FACULTY OF COMMERCE

DEPARTMENT OF ACCOUNTING

Course Code: **LAW214**

COMMERCIAL LAW II (B.COM)

Time allowed: 3 Hours

Instructions:

1. Answer **ALL** questions.
2. Each Question Carries 25 Marks.
3. Begin each question on a new page.
4. Make sure that you write legibly, that your expression is clear and that you refer to authority.

Special Requirements: NONE

Additional Material(s): NONE

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance card but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

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QUESTION 1

Abel signs a proposal form for a life insurance policy and submits it to an insurance company. Though no medical examination is required, the proposal form asked whether Abel has seen a doctor during the past two years. Abel has in fact not seen a doctor in the past two years, but six years ago his doctor told him that he had tested positive for cancer, and probably would die soon. Abel does not mention this to the insurer. Abel dies and his wife claims on the policy. Consider and analyse the following situations:

- (a) Is the insurance company obliged to pay?
- (b) Would your answer be different if the proposal form stated the following: "No medical evidence required. All applications are accepted"?

[25 Marks]

QUESTION 2

With specific reference to the case of *Transitional Local Council of Randfontein v ABSA Bank Ltd* [2000] 2 All SA 134 (W), describe what constitutes a *depositum* in the law of banking.

[25 Marks]

QUESTION 3

The case of *Energy Measurement (Pty) v FNB of SA* 2002 (3) SA 396 identified compelling considerations for the imposition of a duty of care on a collecting banker when opening a new account for a prospective client. Before you discuss those considerations, give a brief account of the material facts of the case, the legal issues as well as the reasoning behind the court's decision.

[25 MARKS]

QUESTION 4

Daniel, who has never had any dealings with Phil, signed a cheque in blank and handed it to Eric so that Eric might make certain payments on Daniel's behalf. Eric fraudulently completed and delivered the cheque to Phil, who accepted it in payment for certain goods sold and delivered. The cheque was made payable to Phil or bearer. The cheque got dishonoured. Phil then sued Daniel, alleging that he (Phil) was a holder in due course. Daniel alleged that Phil was not a holder in due course because the cheque had been signed in blank and was not completed in accordance with the authority which Daniel had given Eric. Was Phil a holder in due course? Could Phil enforce the payment of the cheque against Daniel? Discuss fully referring to case law.

[25 MARKS]

END OF EXAM