

**INSTITUTE OF DISTANCE EDUCATION****LAW DEPARTMENT****FINAL EXAMINATION, MAY 2005**

**TITLE OF PAPER : COMMERCIAL LAW**

**COURSE CODE : AC 202 – 2 (HALF COURSE)**

**TIME ALLOWED : TWO HOURS**

**INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.**

**QUESTION 1**

Discuss the prerequisites that must have been complied with for agency to be created by ratification.

[25 marks]

**QUESTION 2**

How does a company differ from a partnership?

Compare and contrast the two.

[25 marks]

**QUESTION 3**

(a) Distinguish briefly between a mortgage and pledge.

[9 marks]

- (b) A gave B a flock of sheep as security (pledge) for a loan he received from B. The pledge contained a *pactum commissorium*. When repayment was due A failed to pay. Later, however, he managed to raise the amount and tendered its payment. B took the attitude that he had already acquired ownership by the failure of A to pay on time, and refused to give back the sheep in repayment of the loan. A intends to sue B for their return.

Advise A on his chances of success and include in your answer the legal status of a *pactum commissorium*.

[9 marks]

- (c) Distinguish briefly between a landlord's hypothec and a hire-purchase seller's hypothec.

[7 marks]

**QUESTION 4**

- (a) Anyone who takes out an insurance policy must have what is known as an insurable interest in what is being insured.

Discuss what this means.

[9 marks]

- (b) Give six (6) instances of the existence of insurable interest.

[6 marks]

- (c) Any contract of insurance DEMANDS that it is entered into in the utmost good faith (*UBERRIMA FIDES*).

This principle of good faith rests on both the parties, the insurer and the insured. Discuss.

[10 marks]

**[Total: 25 marks]**

**QUESTION 5**

In regard to the third party motor vehicle insurance, the injured party (or the legal representative of the deceased) must bring his claim against the Motor Vehicle Accident Fund (M.V.A) direct.

(a) Who can claim from the Fund?

[5 marks]

(b) What does the claimant for compensation have to establish?

[5 marks]

(c) List the certain cases in which the liability of the MVA Fund to compensate a third party is limited.

[10 marks]

(d) A without looking, suddenly dashed off the pavement to cross the road, and is injured by driver B who is driving carefully on his correct side of the road.

Will A have any claim against the M.V.A Fund?

[5 marks]

**[Total: 25 marks]**

**QUESTION 6**

(a) What is **LETTING AND HIRING** or (**LEASE**)?

[5 marks]

(b) Define the essentials of the contract of lease in detail.

[20 marks]

**[Total: 25 marks]**

**QUESTION 7**

(a) Describe the basic procedure on insolvency.

[10 marks]

(b) Distinguish between voluntary surrender and compulsory sequestration.

[10 marks]

- (c) List five (5) grounds upon which the court may decide not to grant rehabilitation.

[5 marks]

**[Total: 25 marks]**