

**UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF ACCOUNTING**

**EXAMINATION PAPER, 2014
(MAIN)**

TITLE OF PAPER	:	COMMERCIAL LAW
COURSE CODE	:	AC 102
DURATION	:	3 HOURS
MARKS ALLOCATED	:	100 MARKS
INSTRUCTIONS	:	ANSWER QUESTION <u>ONE</u> WHICH IS <u>COMPULSORY</u>, & THREE (3) QUESTIONS OF YOUR CHOICE.

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

Question One

Sputnik and Sparks are two Second year Uniswa commerce students who have been friends since high school. Sputnik, a famous budding kwaito artist (and a charmer with the ladies of Uniswa), is also a top-drawer fashion model. For his silhouette, he has his long trusted barber and confidante, Sparks to thank. One day, while Sputnik was having his trade-mark Mohawk hairstyle trimmed at the S-Block, he notices Sparks sweep, pick up and put his hair follicles and other molecular remains into his (Spark's) waist-bag. Sputnik quizzes Sparks about this, and the latter responds by saying "ah, my-chyna! Ya know that a man has to fortify -'cinisa' some times."

Sputnik laughs, but cautions Sparks by retorting that - "you live by the voodoo, you die by the voodoo!" (In all the 2 years of hair-cutting friendship previous to this incident, Sputnik had never cared about the disposal of his hair).

Sputnik immediately thereafter protested stating that he owned the hair and that he wanted it back. Sparks vehemently refused and dashed out of the hostel to meet and sell it (for E1000) to another friend, Mfolozi and Betty his girlfriend. Unbeknown to Betty, Mfolozi had desperately needed the hair in order to use it for lucky charms with the other campus ladies, while the former needed it for extra vanity grooming. In fact, Mfolozi had been advised by his diviner to take Sputnik's hair and weave it into his dreadlocks with a certain oil concoction for him to have the same fame and fortune as Sputnik. Additionally, this would also help heal his scalp cancer and lice.

A lawsuit is subsequently filed by Sputnik against the troika of defendants, and he has retained you to advise him. With all these facts in mind:

- a) Referring to appropriate authorities, state and discuss the legal issues implicated by this matrix.
- b) How may Sputnik proceed against Mfolozi and Betty if it is subsequently discovered that they are hopelessly indigent and equally resistant to debt counselling and management.

[25 Marks]

Question Two (5 Marks each)

With the aid of appropriate examples, explain the following:

- a) Undue preference
- b) Subsequent impossibility of performance
- c) Subrogation
- d) "holder-in-due course"
- e) undisclosed principal

[25 Marks]

Question Three

A) Bongo Mabuza is the company secretary of Diehard (Pty) Ltd and is authorized to sign cheques on behalf of the company. Advise Bongo on the best manner he should make out the cheques and how he should sign them so that;

- i) He does not incur personal liability on the company's cheque. **3**
 - ii) Diehard Pty Ltd obtains maximum protection against loss or theft if the cheques are sent through the post. **7**
- B) Critically discuss the concept of "fictitious payee" according to the case of **Bank of England v Vagliano Brothers**. **15**

[25 Marks]

Question Four

Gwebu owns a large house in Manzini. He has taken out an insurance policy against fire in respect of the house with "Mbabane All Purpose Company Ltd". At the time he took out the insurance policy, the house was used as a dwelling house for himself and his family.

The previous policy has now expired and Gwebu filled out a fresh proposal form for the renewal of the policy on 10th May 2012. In July 2012, Gwebu's family moved to Vuvulane and Gwebu gave the house to his sister as stokvel and shebeen. In the proposal form there was the following standard question: "To what use is the house to be put?" Gwebu's answer was: "dwelling house." The insurance company promptly renewed the policy.

On the 15th November 2012, there was a fire which destroyed the house. Gwebu then sought to recover on the policy but Mbabane All Purpose Insurance Company discovered that the house was in fact being used as a shebeen and beer pub, and repudiated Gwebu's claim.

Gwebu has now retained you to advise him on whether he is entitled to recover on the policy. Discuss and advise. **[25 Marks]**

Question 5

Closely referring to case law, critically discuss the four categories of person implicated under our law of agency.

[25 Marks]

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