

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF ACCOUNTING
LAW214 RE-SIT EXAM PAPER

Programme of Study	:	B. Comm. Level 2
Title of Paper	:	Commercial Law II
Course Code	:	LAW214
Time Allowed	:	3 Hours
Examiner	:	Dr. M.N. Shongwe
Total Marks	:	100

INSTRUCTIONS:

1. Answer ALL questions.
2. Begin each question on a new page.
3. Make sure that your expressions are clear and that you refer to relevant case law.

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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

Daniel, who has never had any dealings with Phil, signed a cheque in blank and hand 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]

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

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]

END OF EXAM