

Course Code: L301 (M) 2006

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2006**

**TITLE OF PAPER** : **MERCANTILE LAW**

**COURSE CODE** : **L301**

**TIME ALLOWED** : **THREE (3) HOURS**

**INSTRUCTIONS** : **1. THE PAPER CONSISTS OF SIX QUESTIONS.**  
**2. ANSWER ANY FOUR FULL QUESTIONS.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE  
INVIGILATOR**

**QUESTION 1**

On 1<sup>st</sup> October, Van Wyk, an art dealer in Manzini appoints Thembi his agent in Nhlanguano, and that same day, he sends a letter to Artistes Ltd, a company dealing in paintings in Nhlanguano, confirming Thembi's appointment, and her authority to buy and sell pictures on his behalf. In fact, Thembi is under express instructions not to deal with any pictures alleged to have been painted by Warholle because of the risk of forgery. On 10<sup>th</sup> November, Thembi, purporting to act on behalf of Van Wyk, contracts with Artistes Ltd to buy from it "The Pink Coyote", a genuine Warholle painting, for E65,000. On 12<sup>th</sup> November, Thembi visits the office of Mbabane International Galleries and without mentioning Van Wyk, contracts to sell it "The Pink Coyote" for E80,000. Thembi intends to keep the profits for herself. On 16<sup>th</sup> November, Artistes Ltd discovers What Thembi is trying to do and tells Van Wyk that it intends to withdraw from the contract and keep "The Pink Coyote". On 17<sup>th</sup> November Van Wyk purports to ratify Thembi's actions of 10<sup>th</sup> and 12<sup>th</sup> November.

Consider the rights and liabilities of all the parties.

[25 MARKS]

**QUESTION 2**

Peter gave his car to his cousin David, a car dealer, to take it for repair, carelessly leaving the car's registration card in the unlocked glove box. Whilst the car was at David's house, David telephoned Peter and informed him that Muzi, a visitor, had seen the car and insisted to buy it for E40,000. Peter explained that he had not intended to sell the car, but that if David were to receive an offer in excess of E50,000, he would be interested. David drove the car to his showroom and there, Muzi paid E40,000 for it. David had sold the car without contacting Peter again, handing over the registration card and the ignition key.

Advise Peter fully.

[25 MARKS]

**QUESTION 3**

Motsa visited Cooper's Garage Ltd. where he test-drove a second-hand Peugeot 605. Cooper's told him the car had done only 80,000 kilometres. Motsa, who had an old car to give in part exchange, asked for hirepurchase terms. Cooper's Garage produced Stannic Ltd's hire purchase proposal forms. Motsa and Cooper's agreed upon the following terms:

- E40,000 cash price for the car
- 17 monthly instalments of E2 000 each
- A total hirepurchase price of E44 000
- An initial payment of E6 000
- A part exchange allowance of E4 000

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Cooper's completed the proposal form and Motsa signed it. He left the initial payment with Cooper's while the latter sent the form to Stannic Ltd. Motsa was also given possession of the car.

The following day, Motsa learnt that in fact the car had done over 250,000 km. Besides, he found that the car's engine needed overhauling. He drove back the car to Cooper's and demanded for his trade-in and initial payment.

Cooper's reply was that the matter was entirely within Stannic's hands.

The next day Cooper's received Stannic Ltd's acceptance of the proposal and a copy of the fully executed agreement posted two days earlier.

Advise Motsa fully.

[25 MARKS]

#### **QUESTION 4**

"...[T]oday partnership is so analogous to a legal persona that it may be referred to as a quasi-persona.

(From: Potchfestroom diaries v Standard Milk Supply Co., 1913 TPD 513)

Do you agree? Discuss fully.

[25 MARKS]

#### **QUESTION 5**

- (a) Referring to relevant authorities describe and explain the relationship between co-sureties. (10 marks)
- (b) Distinguish between implied authority and ostensible authority. (10 marks)
- (c) Indicate and discuss the ways in which goodwill may be shared in a partnership. (5 marks)

#### **QUESTION 6**

Critically discuss S.2(1) of the Hirepurchase Act, 1969, with Special reference to leases.

[25 MARKS]