

Course Code: L301 (S) 2006

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 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 QUESTIONS.

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

QUESTION 1

Discuss the content and effectiveness of the statutory regulation of hirepurchase transactions in Swaziland. [25 MARKS]

QUESTION 2

Zulu sold several heads of cattle to Matt, it being agreed that the animals were being bought on behalf of a company which Matt was promoting. It was agreed that the animals would be transferred immediately upon the conclusion of the sale, but that the price would be paid by the company once it was incorporated.

The cattle were duly delivered. When the company had been incorporated, it approved the sale by a resolution of the directors. A few days later, the company discovered that the cattle belonged to Dan who had not authorised the sale. However, Dan was not interested in the animals but in their value, and he expressed an intention to sue Zulu for such value. The company then refused to pay the price to Zulu and tendered the animals, contending that it could not acquire ownership of the res aliena and, secondly, that the sale was in any case void since it was entered into when Matt could not represent the company - which was then non-existent.

Fully consider the validity of the company's contentions. [25 MARKS]

QUESTION 3

Mandla is a well-known property developer. He instructs Thuli, an attorney from Mbabane, to purchase tracts of land at Thembelihle for the purpose of building a housing estate. It is agreed by the parties that, in the event of a successful land deal, Thuli would be paid a commission reflecting 10% of the purchase price.

A few weeks later, Thuli rings to inform Mandla that she had secured four parcels of land at E8 million, total cost. Mandla promptly pays the price plus 10% commission to Thuli. Mandla has now discovered that the land he has purchased at Thembelihle in fact belongs to a partnership of which Thuli is a member. Mandla has also discovered that the going rate for comparable plots of land at Thembelihle is E1.5 million per plot and not E2 million.

Advise Mandla. [25 MARKS]

QUESTION 4

Impala Motors entered into a hirepurchase agreement with Mpho for sale of a car to the latter at E4000, payable in 20 monthly instalments of E200 each. It was also agreed that ownership was not to pass to Mpho until he had paid the whole price.

However, after paying two instalments, Mpho resold the car to Vusie at E4 500 which was paid immediately.

Vusie resold the car to Davy at E5 300. However, before the car was delivered, it caught fire due to an electrical fault that developed after the sale, which fault Vusie did not bother to attend to as he did not know much about cars.

Meanwhile, Impala Motors have now written to Vusie demanding for the vehicle or its value. Davy is also claiming from Vusie the refund to him of E5 300.

Discuss all legal issues and advise Vusie fully.

[25 MARKS]

QUESTION 5

Highlight the circumstances under which a partnership may be terminated, and briefly explain the consequences of such termination.

[25 MARKS]

QUESTION 6

Write notes on the following:

- (a) the difference between a guarantee and a suretyship. [7 marks]
- (b) the difference between implied agency and agency by estoppel. [6 marks]
- (c) the difference between constitutum possessocium and traditio brevi manu. [6 marks]
- (d) termination of an agency coupled with an interest. [6 marks]

[25 MARKS]