

Course Code: L308 (M) 2008

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : **MERCANTILE LAW I**

COURSE CODE : **L301**

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

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

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QUESTION 1

It has been suggested that in modern mercantile practice the entity theory, by and large, represents the reality of partnership.

Do you agree? Explain, referring closely to case law.

[25 MARKS]

QUESTION 2

Computronics Ltd had, since January 2001, every once in a while supplied all kinds of computers to Dube's shop at Manzini. Dube's assistant in the shop was his son, Vuyo.

Vuyo's instructions were that all computers worth E3000 each, or more, would be exclusively handled by Dube who would also sign delivery and order books therefor.

However, in February 2002 and March 2004, Vuyo had received 3 computers on each occasion worth E3 050 each, for the shop, in his father's absence. The father had thereafter approved the purchases after careful scrutiny.

On 6th September 2007, Computronics Ltd again delivered 6 computers worth E3 475 each. Dube was present at the shop but was writhing under the grip of a terrible stomach ache.

Vuyo received the computers and signed all relevant documents binding his father in respect of the supply.

When he recovered, a few hours later, Dube reprimanded Vuyo for having signed in the 6 computers. He also called Computronics Ltd and told them that his son had accepted the computers without his authority, and that they should collect them back. They refused to. They now seek to be paid.

Advise Computronics Ltd. referring to authority.

[25 MARKS]

QUESTION 3

Write notes on the following:

1. Computation of damages where there is no market price. [9 marks]
2. The remedy of stopping goods in *transitu*. [8 marks]
3. Problems raised by sections 6 and 9 of the Hirepurchase Act, 1969. [8 marks]

[25 MARKS]

QUESTION 4

Millionaire Selby of Nhlngano always parked his Rolls Royce at Hlophe's garage in Manzini, whenever he was not using it. Hlophe was actually an old friend and a dealer in all sorts of cars.

Recently, while the car was parked at the same garage, one Kumar asked Hlophe for the price of the same, which Hlophe fixed at E385,000. Kumar paid, and Hlophe sold the car to him, using the Registration Book which was always in the car's glove-box, and keys which Selby always left with him. Thereafter, Hlophe migrated to an unknown destination.

That same day, Kumar resold the Rolls Royce to one Patel at E500,000. Patel quickly discovered that the car's back part had been replaced by a back part from an older Rolls Royce. This reduced the value of the car to about E250,000.

Referring to relevant authority, discuss all legal issues and advise Selby and Patel as to their rights and remedies.

[25 MARKS]

QUESTION 5

Swazibank Ltd gave a loan of E100,00 to Mandla of UNISWA. Phiri, Mnisi and Siphon were co-sureties for the debt, while Futhi was co-surety and co-principal debtor.

When Mandla failed to pay, the bank proceeded to sue Futhi, who responded by raising the benefits of excussion and division. The bank is, however, keen on pursuing the action against Futhi for the whole amount because it knows she is the richest of the co-sureties.

(a) Referring to authority, advise the bank fully as to its rights against each of the co-sureties (including Futhi). [15 marks]

(b) If Futhi were made to pay, what would be her rights against the bank, Mandla and the other co-sureties? [10 marks]

[25 MARKS]

QUESTION 6

Explain and critically discuss the definition of hirepurchase in S.2 of the Hirepurchase Act, 1969, with specific reference to leases.

[25 MARKS]