

Course Code: L301 (S) 2008

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2008

TITLE OF PAPER : **MERCANTILE LAW**

COURSE CODE : **L301**

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

INSTRUCTIONS : **1. THE PAPER CONSISTS OF SIX (6) QUESTIONS.**

2. ANSWER ANY FOUR QUESTIONS.

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QUESTION 1

“*Ratihabitio mandatur comparatur.*”

Is this an accurate statement of principle of the agency law of Swaziland? Explain, referring to illustrations and cases. **[25 MARKS]**

QUESTION 2

Futhi, a qualified teacher, was married out of community of property to one Phiri, an accountant in government. Futhi agreed at the instance of her husband to stay at home and devote herself entirely to the upbringing of their two sons. It was also agreed between the two spouses that Phiri should resign from his position in government and begin running a small bakery.

Futhi withdrew E15 000 from her personal savings and gave it to Phiri to start the bakery. Phiri added E25 000 from his account and started the business. With an annual net income of E200 000, the business has been a great success.

However, due to Phiri’s marital infidelity, Futhi has commenced divorce proceedings against Phiri. She demands for an equal apportionment of the net proceeds and assets of the partnership business between herself and Phiri. Her argument is that the business is a family partnership run jointly by her and Phiri, and that because mutual trust and confidence has been irreparably damaged, the partnership should be dissolved.

Advise Phiri.

[25 MARKS]

QUESTION 3

Write short notes on the following:

- (a) del credere agents [5 marks]
- (b) termination of agent’s authority when it is coupled with an interest. [5 marks]
- (c) difference between anonymous partnership and a partnership *en commandite* [5 marks]
- (d) effect of insolvency on a partnership. [10 marks]

QUESTION 4

Muzi sold the chassis and body of a used bus to Gama. The price was E9 500 and the sale was

voetstoots. Thereafter, Gama bought an engine, gearbox and all other necessary spares, and transformed the scrap into a seventy-seater bus, worth E122,000 which earned E21,000 a month.

A few months later, Gama was confronted by one Matse who produced an old registration book to show that the scrap they had used to build their bus was his (Matse's), and he very noisily demanded that it be returned to him. Consequently, Gama handed over the bus to Matse and looked for Muzi, whom he found quickly.

Confronted about the claims by Matse, Muzi argued thus:

- (a) that as the sale was voetstoots, there could be no recovery from him for anything;
- (b) that in any case as Gama had given the bus to Matse, Muzi would not be of any help over the issue of the scrap;
- (c) that if he was to pay any compensation at all, it would be for the scrap, not the bus.

Referring to authority, advise Gama.

[18 marks]

- (d) Does Gama have any rights against Matse? Explain.

[7 marks]

[25 MARKS]

QUESTION 5

Thabo saw a silver-blue Peugeot 407 in Unimotors' showroom in Mbabane. He paid a deposit of E8 000, signed some document and was given possession.

The import of the document was that Nedbank Swaziland Ltd., was letting the car to Thabo at rentals of E800 per month, but that Thabo could at any time purchase the car on payment of the total price of E40,000; and that in that case the deposit and amounts paid by way of instalments would be taken to be part of the price.

After Thabo had paid seven instalments, however, he found himself unable to continue paying the rentals due to new family commitments. Thus he decided that he should terminate the contract. In the meantime, due to inflation, the value of the car now stands at E60,000.

Assuming that the value of the car is within the ambit of contracts governed by the Hirepurchase Act, 1969, advise Thabo who is in the process of working out the termination of the lease.

[25 MARKS]

QUESTION 6

- (a) Referring to authority, discuss the legal position of a co-surety who has paid more than his aliquot share, when the whole debt is not yet paid. [15 marks]

- (b) Distinguish between a suretyship and a guarantee.

[10 marks]

[25 MARKS]