

Course Code: L301 (M) 2009

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2009

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.**

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

QUESTION 1

Having read the glossy dossier about the successful world-wide investment activities of Ultra Finance Ltd (hereafter Ultra), local tycoon Alfred Manana was keen to invest in Ultra. He enquired from Ultra's bankers, Standard National Bank Ltd, Manzini Branch (hereinafter Standard National) about Ultra's credit-worthiness and credibility of their investment programme. Stanley Hewitt, the Manzini Branch Manager, wrote back to say Ultra had an impeccable record, and that Ultra's products were genuine and reliable. Manana then asked that the Bank becomes surety and co-principal debtor in respect of E500,000 which he intended to deposit in Ultra for three (3) years. Manager Hewitt agreed without hesitation. The relevant documentation was then worked out and the said investment in Ultra was effected.

Six months later, however, Ultra was declared insolvent and was wound up.

Subsequent investigations indicated that one Mrs. Rhoda Trublood, the Managing Director and majority shareholder of Ultra, was Stanley Hewitt's eldest daughter who had also borrowed heavily from Hewitt to start the company.

Manana now seeks to sue Standard National for the E500,000.

Advise him fully.

[25 MARKS]

QUESTION 2

Msibi agreed to supply UNISWA with 300 bags of maize meal. Each bag was 50kg, and the price E300 per bag. Delivery was to be by 30th January 2009. Because of mechanical problems at the factory, the production rate went down. Thus, by 30 January 2009, Msibi who was very apologetic, was only able to deliver 210 bags of maize meal, and promised to deliver the rest later.

At the time of delivery, UNISWA's Domestic Bursar was away. When he returned a few days later, he inspected the consignment and found that 5 out of a sample of 75 bags exuded the smell and visibly manifested the presence of mould. He then rejected the whole consignment, although by then Msibi had the rest of the maize meal ready.

Instead, UNISWA bought from elsewhere, another 300 bags of maize meal at E425 per bag.

Referring to authority, discuss all legal issues.

[25 MARKS]

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QUESTION 3

“There is now no doubt ... that the basic common law principle is that a partnership is not a legal entity or *persona* separate from its members ... There are, however ... certain exceptions to this rule, the effect whereof, ... is that, where they apply, there materializes a “juristic ghost”.

Per Nestadt J., in Strydom v Protea, 1979 (2) SA 206 (T)

Explain and critically discuss the quotation, referring to authority.

[25 MARKS]

QUESTION 4

(a) Distinguish between a surety-ship and a guarantee.

(10 marks)

(b) 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)

[25 MARKS]

QUESTION 5

Steve Musi went to Al Qaim Motors (Pty) Ltd in Manzini to buy a motor-bike, and pointed to a beautiful silver-blue one. Sive the dealer there, told him it was “a powerful machine that can get you to Cape Town in barely a day or two,” and that he “would have no trouble with it.” Sive gave Musi the relevant forms,, which the latter filled in and signed. He then paid E2000, being the first of twenty equal monthly instalments. He, however, paid no deposit, for Sive said that was unnecessary. Thereafter, Musi rode away excitedly.

Sive passed the forms to Stannic Ltd, who, however, as the sellers, did not want to do business with Musi. They immediately wrote back to Sive indicating this position, but Sive only received the letter a fortnight later.

In the meantime, a day after he took the bike, Musi had an accident due to the bike’s faulty braking mechanism. Musi approached Sive after recovering from his wounds. The latter said to him, “Your contract is with Stannic ... in any case, you must return the bike urgently because they do not want to do business with you.”

Assuming the Hire Purchase Act 11/1969 applies, advise Musi fully as to his rights and remedies.

[25 MARKS]

QUESTION 6

Write short informative notes on the following:

- (a) The sharing of goodwill on termination of a partnership; (5 marks)
- (b) contracts for the benefit of third parties; (5 marks)
- (c) the benefit of division; (5 marks)
- (d) computation of seller's damages where there is no market price. (5 marks)
- (e) Problems raised by section 6 of the Hire Purchase Act 11/1969. (5 marks)

[25 MARKS]