

Course Code: L301 (S) 2009

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2009

**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.**

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**QUESTION 1**

It has been said that, in the light of the reasoning and decision of NBS Bank v Cape Produce Co (Pty) Ltd and Others, 2002(1) SA 396, there is reason to argue that Glonfico v ABSA Bank, 2001 (2) SA 1048, was wrongly decided.

Do you agree? Explain..

[25 Marks]

**QUESTION 2**

Sipho, Dube and Futhi formed a partnership styled “Daily Manna”, near the Manzini bus rank. It was to deal in food take-aways. Sipho, a professional caterer was to avail his expertise; Dube, a Business Accounting graduate, would take care of the partnership’s accounting books; while Futhi would contribute E37,000 to the partnership account.

Subsequently, Futhi contributed E17,000, and promised to pay the balance very soon. And when, at the end of the fifth month, the business failed to pay rent, Sipho and Dube insisted that Futhi pays up. It was also clear, however, that one reason the business was going down was that Dube had neglected to keep the books as he had promised.

In the meantime, Futhi talked to her confidante, Frank Mlangeni, a Cabinet Minister in government, who went with her to Swazi Bank Ltd, Manzini, and applied for a loan of E60,000 for the partnership. Out of respect for Mlangeni, whom the bank manager believed was a partner in “Daily Manna”, and without going through the formalities, the bank granted the loan.

Sipho and Dube were pleasantly surprised to see the money on their account, but emphasised to Futhi they were not party to the loan which had been obtained without their authorization. Nevertheless, they agreed to use it to settle partnership debts without prejudice to that position.

However, business continued to decline, and they were unable to service the loan. Swazi Bank then instituted proceedings against Frank Mlangeni and each of the partners to recover the money.

(a) Advise F. Mlangeni and the partners fully.

[15 marks]

(b) Sipho, who, unlike all the others, has fulfilled all his obligations, wonders what remedies, if any, are available to him against Futhi and Dube. Advise him.

[10 marks]

**QUESTION 3**

“I do not think .... that it makes much difference whether we regard a partnership as a persona or whether we regard it as a contractual compound of several personae ... The distinction between the two seems more academic than substantial.”

Per *Potchefestroom Dairies and Industries (Pty) Ltd v Standard Fresh Mil Supply Co.* 1913 TPD 506 at 513.

Referring to authority, explain and critically discuss the quotation in the light of the socio-economic or business environment of Swaziland.

**[25 MARKS]**

**QUESTION 4**

Lewis Furnishers Ltd sold a piano to Pastor Musa on “hirepurchase terms”, at E3500, payable in 20 monthly instalments of E175 each. However, no deposit was payable, and on payment of the first instalment, Pastor Musa was given possession of the piano. Thereafter, he paid five instalments regularly, but the sixth instalment was two weeks late. Thus, representatives of Lewis Furnishers Ltd went to Pastor Musa’s church and repossessed the piano in his absence. They resold it to another customer a day later.

Three days later, Pastor Musa went to Lewis Furnishers Ltd’s premises and complained to the Manager about the repossession. The Manager, in turn, showed the Pastor clauses in the hirepurchase agreement which Pastor Musa had signed (without reading). The clauses stated thus:

- (a) For the avoidance of any doubt, the parties hereby agree that this contract is a lease, but that Ownership may pass to Pastor Musa, the lessee, anytime, on payment of the twenty (20) monthly instalments of E175 or the equivalent lump sum.
- (b) In case of default in respect of any instalment due, Lewis Furnishers Ltd may at anytime repossess the piano, and the amount paid, i.e. the rent, shall not be refundable.
- (c) The lessee may at anytime terminate the agreement by giving due written notice to the lessor, and upon payment of 20 per cent of the unpaid balance as depreciation.

Referring to relevant authority, advise Pastor Musa as to his rights and remedies.

**[25 MARKS]**

**QUESTION 5**

Recently, Winex Ltd, a wine merchant had the following stock at its warehouse:

- 100 bottles of 1960 Chateau Orczy;
- 200 bottles of 1970 Chateau Pimperl, which, unknown to Winex Ltd., were the last bottles of that vintage remaining unconsumed anywhere in the world;
- 350 bottles of 1980 Chateau Chauvelin;
- Assorted other wines

Winex then contracted to sell: 100 bottles of 1960 Chateau Orczy to Vusie; 200 bottles of 1970 Chateau Pimperl to Dan; 50 bottles of 1980 Chateau Chauvelin to Futhi, who paid the price of E9000; 300 bottles 1980 Chateau Chauvelin to Musi, which were delivered to him on payment of the price. A tasting expert then examined a sample of 30 bottles (out of the 300) and found that the quality had deteriorated badly. Winex Ltd. explained that they did not know how that had come about.

Yesterday, as Winex Ltd's lorry was delivering the 50 bottles of wine to Futhi, it crashed and all the wine on board was lost. Meanwhile, last night, a fire destroyed Winex Ltd's warehouse and all its contents.

Advise Vusie, Dan, Musi and Futhi.

**[25 MARKS]**

**QUESTION 6**

Write short informative notes on the following:

- (a) Principal's right to revoke a power of attorney coupled with an interest; (5 marks)
- (b) the benefit of excussion; (5 marks)
- (c) the rights of a creditor against a surety and a co-principal debtor; (5 marks)
- (d) agency of necessity ; (5 marks)
- (e) the difference between constitutum possessorium and traditio brevi memi. (5 marks)

**[25 MARKS]**