

UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATIONS, MAY 2010

TITLE OF PAPER : **MERCANTILE LAW I**

COURSE CODE : **L 301**

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

INSTRUCTIONS : **a) THE PAPER CONSISTS OF SIX QUESTIONS.**
b) ANSWER ANY FOUR QUESTIONS

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR

QUESTION 1

It has been said that the question whether a partnership is conceptualised/ analysed in terms of the Entity Theory or the Aggregate Theory is more academic than substantial.

Do you agree? Explain, in the light of the socio-economic or business environment of Swaziland.

(25 marks)

QUESTION 2

At a special sale at UNIMOTORS, Mbabane, Musa Hlophe acquired a silver blue Toyota Emina without even paying any deposit.

The terms of the contract included the following:

- (a) That the transaction was a lease between Musa and UNIMOTORS;
- (b) that the monthly rental was E2000 payable by the 7th day of every month;
- (c) that on failure to pay in time, the lessor (UNIMOTORS) would automatically be entitled to repossess the car;
- (d) that for the avoidance of any doubt, it was understood by the parties, that in case of such repossession, no amount paid as rental would be refundable to lessee (Musa);
- (e) that lessee was entitled to take possession on payment of the first rental;
- (f) that lessee could at any time exercise the option to purchase the car on the payment of a total purchase price of E50000 (the market value), and that in that case the rentals paid would be considered as part of the price;
- (g) that the lessee could at any time terminate the contract on giving a month's notice to the lessor, and paying the depreciation, spelt out as difference between 60 per cent of the E50000 and the total of the rentals paid.

Musa paid the first rental and took possession of the car. Subsequently, after paying another five rentals, he found himself unable to continue with the arrangement due to family commitments. Indeed, he is now in arrears in respect of the seventh and eighth rentals. UNIMOTORS are threatening to repossess the car. He, in turn, is considering terminating the contract.

Bearing in mind that in the meantime, due to inflation, the market value of the car has risen to E80,000, advise him fully. DO ASSUME that the Hirepurchase Act 11/ 1969, is applicable.

(25 marks)

QUESTION 3

Joe Mnisi sold the chassis and body of a used pick-up to Ice Matse. The price was E10000 and the sale was *voetstoots*. Matse then bought an engine, gearbox and all other necessary parts, and transformed the 'scrap' into a usable pick-up worth E 55000, which earned him about E9000 a month.

However, after using the pick-up for four months, Matse discovered that the chassis was cracked. While he was still trying to address this problem, Matse was confronted by one Ceko who produced an old registration book to show that the 'scrap' Matse had used to build the pick-up was his (Ceko's); and he very noisily demanded that it be returned to him.

Matse then handed over the pick-up to Ceko and looked for Mnisi. Confronted about the cracked chassis and the fact that the 'scrap' belonged to Ceko, Mnisi argued thus:

- (a) that as the sale was *voetstoots*, Matse could not recover for breach of any implied warranty;
- (b) that as the defect in the chassis only developed four months after the sale, he, Mnisi, could never have been liable for it, any way;
- (c) that Matse should also note the requirement that to get compensation for the cracked chassis, he would have to return it to Mnisi;
- (d) that in any case, as Matse had given the pick-up to Ceko, he, Mnisi could not be of any help over the issue of title to the 'scrap'; and
- (e) that if he were to pay compensation, it would be for the 'scrap', not the pick-up.

Referring to authority, advise Matse fully as to his rights and remedies.

(25 marks)

QUESTION 4

It has been suggested that although *Gloufco v ABSA Bank*, 2001 (2) SA 1048, may sound harsh, it was, on the whole, correctly decided.

Do you agree? Explain.

(25 marks)

QUESTION 5

Zakes Mda was the Manager of Free Theatre, a famous drama group in Mbabane. He often ordered theatre attire from one Marvis Kelly of Manzini. However, any order

exceeding the value of E15000 had to be specifically approved by Dudu Mamba, Chairperson of the Board of Trustees.

On two occasions in the past 3 years, however, Zakes had ordered pieces from Kelly worth E17200 and E18100 respectively, without Ms Mamba's authority, but the latter had subsequently approved the deals without hesitation.

Very recently, Zakes ordered from Kelly pieces worth E18000 without Ms Mamba's approval. But he assured Kelly that Ms Mamba had approved. This was because he was certain she would approve as the play for which the pieces were required was very popular, and would, in all probability raise a lot of money.

Unfortunately, when Zakes eventually spoke to Ms Mamba, she did not approve as she considered the price too high. Instead, she gave the order to her sister, who was to be paid E6000 for the same.

Kelly who had already made the pieces was very disappointed, especially because they are attire worn by soldiers in ancient Greece, which no one around is interested in. Indeed, all his efforts to find an alternative buyer in Swaziland have been in vain. And yet, he had spent E5000 on labour, and E 6000 on materials.

Advise Kelly.

(25 marks)

QUESTION 6

Write short informative notes on the following:

- (a) The difference between a guarantee and a suretyship. (5 marks)
- (b) The relationship between co-sureties. (5 marks)
- (c) The retiring partner's right of access to partnership books after the termination of a partnership. (5 marks)
- (d) Partners' liability for partnership debts of an insolvent partnership. (5 marks)
- (e) Termination of an agency coupled with an interest. (5 marks)

(5 marks)

(25 marks)
