

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION, MAY 2012**

165

- TITLE OF PAPER :**                   **MERCANTILE LAW I**
- COURSE CODE :**                   **L 301**
- TIME ALLOWED :**                   **THREE (3) HOURS**
- INSTRUCTIONS :**
- 1. THE PAPER CONSISTS OF SIX QUESTIONS.**
  - 2. ANSWER ANY FOUR (FULL) QUESTIONS.**

**THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR TO DO SO.**

### **QUESTION 1**

Musi went to Unimotors' show room in Mbabane and selected a sky-blue car labelled "Porche 1954. Price E1,000,000." He said to Joe, the salesman, "I am taking this car." He then paid a deposit of E200,000, leaving the balance to be paid "when I return from Durban within a fortnight. If my driver does not come for it in a day or two, send it to my house yourself. Otherwise, keep it for me".

"Done deal!" the salesman replied.

However, the following day, one Khoza came to Unimotors, Mbabane, purchased the same "Porsche 1954 model", and paid the total price by bank-guaranteed cheque. But, the salesman emphasized to him that the sale was voetstoots.

Khoza drove the car away, and resold it to one Dan at E2 million.

Dan's mechanical engineers at Leites, however, discover that the Porsche has a 1968 Mercedes Benz engine which had been stolen from them three years earlier, and that the body was a 1963 one, retouched to suit the appearance of a 1954 model. Otherwise the car was in sound mechanical condition.

Leites detach their engine and store it away at their garage, whereupon Dan confronts Khoza, demanding for a refund of the E2 million he had paid as the price.

Khoza's reply is that Dan would have to return the car in its original condition if he wants a refund.

Meanwhile, Musi, who has returned from Durban, also wants to get his Porsche from Unimotors.

Referring to authority, discuss all legal issues.

[25 MARKS]

### **QUESTION 2**

It has been suggested that *Glonfco v. ABSA Bank, 2001 (2) SA 1048*, is better law than *NBS Bank v. Cape Produce Co. (Pty), 2002 (1) SA 396*.

Do you agree? Explain.

[25 MARKS]

### **QUESTION 3**

Explain and critically discuss the possible functional utility of the partnership business form in the socio-economic circumstances of Swaziland.

[25 MARKS]

#### **QUESTION 4**

Themba acquired a VW Golf from Al Quaim Motors on the following terms:

- (a) The transaction was stipulated to be a lease in which Al Quaim Motors were the lessor, and Themba was the lessee;
- (b) no deposit was payable;
- (c) the monthly rental was E3000 payable on the 2<sup>nd</sup> day of every month;
- (d) on failure to pay in time, the lessor would automatically be entitled to repossess the car;
- (e) that in case of such repossession, no amount paid by lessee as rental would be refundable to lessee (Themba);
- (f) that lessee could at any time exercise the option to purchase the car on the payment of a total purchase price of E54,000, 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 a depreciation stipulated as the difference between 60 per cent of the total purchase price and the total of the rentals paid.

Themba paid the first rental and took possession of the car. However, having paid another four rentals, he found himself unable to continue with the arrangement due to lack of funds. Thus, he is now in arrears in respect of the sixth and seventh rentals.

Al Quaim Motors are threatening to repossess the car. He, in turn, is considering terminating the contract.

In the meantime, due to inflation, the value of the car has risen to E72,000.

- i. Assuming that the Minister has, on the basis of s.4(i)(c) of the Hire Purchase Act, 1969, declared by notice in the gazette that, cars of up to the value of E80,000 may be governed by the Act, would you for any other (legal) reason consider the Act inapplicable to this transaction? Explain, referring to authority. (15 marks)
- ii. Assuming the Hirepurchase Act 1969 is applicable, advise Themba fully.

(10 marks)  
[25 MARKS]

#### **QUESTION 5**

Sipho, Joel and Pita were partners dealing in second-hand computers. They normally obtained their supplies from Computronics Ltd, and it was Joel, the Managing Partner, who processed and collected the computers on behalf of the firm.

Unknown to Sipho and Pita, Joel also often bought brand new computers for his personal business from the same supplier, and using the partnership's account.

For as long as Joel paid fully for his computers there was no visible problem. Recently, however, Joel's business was experiencing financial difficulties, and Joel was unable to pay Computronics a sum of E38,000. Similarly, the firm was unable to pay E52,000 in respect of its computers.

Only at that stage did the partners scrutinize Joel's activities. They then pointed out to Computronics Ltd, that they would only pay the E52,000. However, as Computronics indicated, for 17 months, it had made claims in respect of second-hand and new computers for which, as far as it knew, the firm always paid. It, therefore, insisted that even now the firm pay for Joel's debts.

Advise the partners who are themselves experiencing serious financial difficulties.

[25 MARKS]

### QUESTION 6

Write short informative notes on the following:

- (a) How insolvency affects a partnership. (5 marks)
- (b) How goodwill may be shared by the parties on termination of a partnership. (5 marks)
- (c) The difference between liability of a co-surety and that of a co-surety who is also a co-principal debtor. (5 marks)
- (d) Agency of necessity. (10 marks)

[25 MARKS]