

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

169

SUPPLEMENTARY EXAMINATION, JULY 2012

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 QUESTIONS.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GIVEN BY THE
INVIGILATOR.**

QUESTION 1

Explain and critically discuss S.2(1) of the Hire Purchase Act, 1969, with specific references to leases. [25 MARKS]

QUESTION 2

It has been said that the law pertaining to the doctrine of undisclosed principal is anomalous and contrary to the general law of agency.

Do you agree? Explain, referring to case law. [25 MARKS]

QUESTION 3

When Matt was going to the US to do his Ph.D in History, he left his Land Cruiser (as well as the registration book) with his cousin, Ceko, a dealer in used cars, who had in any case very often driven the Land Cruiser around even when Matt was still in Swaziland.

Subsequently, using the registration book, Ceko, without authority, resold the Land Cruiser to Zakes at E75,000. Zakes in turn, resold it to Futhi at E95,000.

Futhi noted during the trial run that the car lost power when going uphill. Since she did not know much about cars, she asked Zakes what caused this. Zakes, however, laughed this matter off, saying a second hand car can never be perfect, and that this car was really all right. Futhi then reluctantly paid the price.

Two weeks later, while Futhi was driving to Mbabane, the car completely broke down. A well known mechanic advised her that the car engine needed over hauling.

(a) Assuming that Ceko has disappeared, advise Matt who has returned from the US as to his rights. (15 marks)

(b) Advise Futhi as to her rights against Zakes. (10 marks)

[25 MARKS]

QUESTION 4

Matse saw a Toyota Lucida in Al Quim's show room in Manzini, and was immediately attracted by its silver-grey colour. Pita, the dealer he found there, told him it was a "good little bus" and that he "would have no trouble with it". Pita gave Matse the relevant forms, which the latter filled in and signed. He then paid E3000, being the first of sixteen monthly instalments. He, however, paid no deposit, for Pita said that was unnecessary.

Thereafter, Matse drove off excitedly.

Pita passed the forms on to Stannic Bank, who, however, as the sellers, decided they did not want to do business with Matse. They immediately wrote back to Pita indicating this position, but Pita only received the letter a fortnight later.

In the meantime, a day after he took the car, Matse had an accident due to the car's faulty steering mechanism. Matse approached Pita after recovering from his wounds. The latter said to him, "Your contract was with Stannic Bank ... In any case, you must return the car urgently because they do not wish to do business with you."

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

[25 MARKS]

QUESTION 5

"I do not think that it makes much difference whether we regard 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 Ltd v. Standard Fresh Milk Supply Co., 1913 TPD 506, at 513.

Referring to authority, explain and critically discuss the quotation in the socio-economic context of Swaziland.

[25 MARKS]

QUESTION 6

Joe, Dave and Rose formed a partnership called "Daily Bread", near Manzini bus rank. It was to deal in food take-aways. Joe, a professional caterer, was to avail his expertise; Dave, a Business Accounting graduate, would take care of the firm's books; while Rose would contribute E50,000 to the firm's account.

Subsequently, Rose contributed E21,000 to the account, and promised to pay the balance very soon. And when, at the end of the fifth month, the firm failed to pay rent, Joe and Dave insisted that Rose pays up. It was also clear, however, that one reason the business was going down was that Dave had neglected to keep the books as he had promised.

In the meantime, Rose talked to her confidante, Brian Madonsela, a Cabinet Minister, who went with her to Swazi Bank, Manzini, and applied for a loan of E75,000 for the firm. Out of respect for Madonsela, who the bank manager believed was a partner in "Daily Bread", and without going through the formalities, the bank granted the loan.

Joe and Dave were pleasantly surprised to see the money on their account, but emphasized to Rose they were not party to the loan which had been obtained without their authorisation. Nevertheless, they agreed to use the money without prejudice to that position.

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

- (a) Advise Brian Madonsela and the partners fully. (15 marks)
- (b) Joe, who, unlike all the others, has fulfilled all his obligations, wonders what remedies if any, are available to him against Rose and Dave. Advise him.

(10 marks)
[25 MARKS]