

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, DECEMBER 2012

TITLE : **MERCANTILE LAW I**

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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BY THE INVIGILATOR**

QUESTION 1

“Ratihabitio mandato compartur” (D46.3.12.4 (Ulpian))

Discuss.

(25 Marks)

QUESTION 2

Pension Brief Ltd were a private pension scheme whose purpose was to augment existing state pension schemes in Swaziland. To join the scheme, one would make a monthly contribution that was in line with an expected stipulated pension.

Pita had for a long time been a member of the scheme, contributing E2500 per month. He would be entitled to E1,000,000 on retirement from his job at Ministry of Works, at the age of 65 years.

Unknown to Pita, Pension Brief's Chief Accountant, Vusie, did not place any of Pita's contributions into the relevant Pension Brief account at Mbabane. Instead, he sent the money to his (Vusie's) private account at Standard Bank, Manzini, and then issued Pita with a false receipt.

In addition, Bill, Pension Brief's Managing Director, and Vusie had entered into a contract as sureties and co-principal debtors for a loan granted to Bill's daughter, Futhi. By the same contract, Pension Brief had also renounced the benefit of excussion. The loan, taken from Nedbank, Manzini, was for E3,000,000 payable in nine years. Futhi failed to pay. Nedbank sued Pension Brief.

It was then that Pension Brief's Corporation Secretary learnt of this commitment, which had been entered into without the knowledge of the Board of Directors. He accordingly advised the bank that Pension Brief could not be liable for the unauthorised commitment. Nedbank's response was that in a similar transaction four years earlier, the same Chief Accountant and Managing Director had similarly committed Pension Brief, and the latter had paid up. The Corporation Secretary's response was that that had been authorised by the Board.

Around the same time, Pita retired from his job, and wrote to Pension Brief asking for his pension benefits. The surprised Corporation Secretary replied to Pita indicating that as Pita had never made any contribution to Pension Brief, they could not help him.

Referring to authority, advise both Nedbank and Pita.

(25 marks)

QUESTION 3

Highlight and explain the circumstances under which a partnership may be validly terminated.
(25 marks)

QUESTION 4

Mnisi had bought his Cressida (2001 model) from Al Qaim, Motors, Manzini in 2006 at E42,000.

Recently he took it to Excellent Cars Ltd, well-known car dealers in Mbabane, and told them he wanted to sell his car, but that they should not put it in the show room until he heard from his valuer about the car's correct value. They agreed.

However, as soon as Mnisi left, they put the car in the show room and sold it to Patel at E30,000. Patel, in turn, resold the car to Dube at E35,000. Dube then immediately took it to Leites for a general mechanical assessment.

There it was discovered that though the engine was a 2001 one, the chassis was 1996, and the body 1998. Indeed, Leites noted that this was the engine which had been stolen from them in 2002. They thus sought to detach it or recover it by court action.

In the meantime, Mnisi, returned to Excellent Cars Ltd. a fortnight later and told them the correct car value was E52,000. He was shocked to learn they had resold the car at E30,000.

Referring to authority, advise Mnisi and Dube as to their rights and remedies. (25 marks)

QUESTION 5

Gama acquired a computerised industrial sewing machine on hire-purchase terms from Machine Sales Ltd, whose Managing Director, Fikile, was an old friend of his. Thus Gama got possession of the machine without even paying a deposit. Fikile said it was unnecessary.

Additionally, although a printed contract of the terms was given to Gama, he never read or signed it. Indeed, Fikile told him there was no need to hurry over the signing, and that what was critically important was to keep paying the monthly instalments by the 7th day of each month.

Thus, Gama regularly paid the instalment of E1500 per month, in the hope that the total price of E36,000 would be fully paid up in exactly 24 months. However, after he had paid 20 instalments, there was a huge power surge one afternoon, which destroyed many of the state-of-the-art functions of the machine, whose value fell by about 70 per cent.

He then asked Fikile whether Machine Sales could exchange the machine with one that was still in good condition. She told him that was impossible, except under a totally new contract.

Gama then consulted an attorney who advised him that he could resile from the contract, and get back all money paid to Machine Sales. Gama accordingly wrote to Machine sales seeking to resile from the contract.

Assuming the Hire-Purchase Act 11/1969 applies to this fact situation, advise Machine Sales fully. (25 marks)

QUESTION 6

Write short informative notes on the following:

- (a) C.I.F. contracts; (5 marks)
- (b) the benefit of division (5 marks)
- (c) the remedy of stopping goods in transitu (5 marks)
- (d) sharing the value of goodwill in a dissolved partnership (5 marks)
- (e) difference between a guarantee and a suretyship (5 marks)