

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2013

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 GRANTED BY THE INVIGILATOR

QUESTION 1

It has been said that the doctrine of *undisclosed principal* is theoretically anomalous and largely unacceptable in law.

Do you agree? Explain, referring to specific illustrations and authority.

[25 marks]

QUESTION 2

Musa agreed to supply Nazarene Hospital with 400 bags of pea-nuts. Each bag was 50 kg, and the price was E 700 per bag. Delivery was to be by 30th January 2013. Due to poor rains, however, Musa had a poor harvest of pea-nuts; it was also hard to get pea-nuts on the open market. Thus, by 30th January, 2013, Musa, who was very apologetic, was only able to deliver 220 bags of pea-nuts. He promised to deliver the rest later.

At the time of delivery, Nazarene Hospital's domestic bursar was away. When she returned, a few days later, she inspected the consignment and found that 5 out of 80 bags randomly examined, exuded the smell and visibly manifested the presence of mould. She then rejected the whole consignment, although by then Musa had the rest of the pea-nuts ready.

Instead, the hospital bought from elsewhere another 400 bags of pea-nuts at E 987 per bag.

Referring to authority, discuss all legal issues.

[25 marks]

QUESTION 3

"There is now no doubt ... that the basic common law principal is that a partnership is not a legal entity or *persona* separate from its members ... There are, however ... certain exceptions to this rule, the effect whereof, ... is that, where they apply, there materializes a 'juristic ghost'".

(From Nestdt J., in *Strydom v Protea*, 1979 (2) SA 206 (T))

Explain and critically discuss the quotation, referring to relevant learned literature and authority.

[25 marks]

QUESTION 4

Bradlows Ltd sold a music system to Joe on "hire-purchase terms", at E3600, payable in 20 monthly instalments of E 180 per month.

However, no deposit was payable, and on payment of the first instalment, Joe was given possession of the system. Thereafter, he paid six instalments regularly, but the seventh instalment was delayed. Indeed, when it was two days overdue, salesmen of Bradlows Ltd went to Joe's house and were allowed in by Joe's brother. They then repossessed the music system, and resold it to another customer a day later.

Three days later, Joe went to Bradlows Ltd's premises and complained to the Manager about the repossession. The Manager, who was very polite, showed him clauses in the hire-purchase agreement (which Joe had signed without reading) which stated thus:

- (a) For the avoidance of any doubt, the parties hereby agree that this contract is a lease, but that ownership of the music system may at any time pass to Joe, the lessee, on payment of the twenty monthly instalments or the equivalent lump sum.
- (b) In case of default in respect of any instalment due, Bradlows Ltd may at any time repossess the music system, and the amount paid shall not be refundable.

Does Joe have any remedies against Bradlows Ltd? Explain, referring to authorities.

[25 marks]

QUESTION 5

In March, 2012, Fikile and Mnisi entered into a partnership whose objective was to deal in new motor-bikes. Mnisi was to contribute E 40,000 plus a van. Fikile, who owned a stand with offices in Mbabane, was to contribute that property to the partnership to be used as the principal place of business.

In February 2013, the partnership sent Fikile to Suzuki Ltd, Manzini, to negotiate the purchase of 20 motor-bikes. Lee Ping, the Managing Director of Suzuki Ltd, informed Fikile that there were no new motor-bikes, but that Suzuki was offering high-quality used motor-bikes at give-away prices. Fikile explained the opportunity to Mnisi, who, however, insisted on dealing in new motor-bikes only. It is no secret that Mnisi's business acumen is rather low, and that he would have needed more careful explanation to understand how lucrative the new deal would be.

Subsequently, Fikile decided to go into business with Lee Ping and invested E 60,000 in the used motor-bikes. This resulted in a profit of E 255,000 which was accordingly paid into her account at Nedbank, Mbabane.

Mnisi now insists that Fikile must account for these profits to the partnership. He is also unhappy that Fikile has not yet arranged to transfer the land on which the partnership business is, into the names of the partnership.

Advise Mnisi as to the legal remedies available to him, if any.

[25 marks]

QUESTION 6

Write short informative notes on the following:

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| (a) Implied warranty of authority; | (6 marks) |
| (b) a partnership <i>en commandite</i> ; | (6 marks) |
| (c) <i>constitutum possessorium</i> ; | (6 marks) |
| (d) ostensible authority | (7 marks) |
| | [25 marks] |
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