

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

138

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2014

TITLE OF PAPER: MERCANTILE LAW I

COURSE CODE: L301

TIME ALLOWED: 3 HOURS

INSTRUCTIONS: (1) ANSWER ALL THREE (3) QUESTIONS
(2) MARKS FOR QUESTIONS OR PARTS OF A
QUESTION ARE SHOWN IN BRACKETS

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GRANTED BY THE INVIGILATOR

QUESTION 1

135

Gcina, the owner of a motor vehicle, concluded an agreement of sale with Thabiso. Delivery of the motor vehicle was to be made in two days later against the payment of the purchase price. Later on the same day while Gcina was driving the same car, it was involved in an accident with another car driven by Sidumo and there was no dispute as to the fact that the collision was attributable solely to the negligence of Sidumo.

- (i) As a general rule, when does the risk of accidental damage to the thing sold pass on to the buyer?

[15 marks]

- (ii) In line with your answer in the above question, did the risk of accidental damage pass to anyone in the above set of facts? If so, to whom did it pass on to, who has a right to recover compensation and from whom in this case?

[10 marks]

Total: [25 marks]

QUESTION 2

What are the rights of Z in each of the scenarios given below? In each case explain the circumstances under which such rights, if any, may arise.

- (a) X buys a second-hand car from Y on hire-purchase and parks it along the beach, locks it and embarks on a morning jog alongside the sea and in the process he slips, falls and breaks his left leg. He is subsequently removed by good Samaritans to the nearest hospital where he was made to spend a few days recuperating. A storm develops and Z realizing that X's car is in danger, removes it to his garage, in the process incurring certain expenditure.

[10 marks]

- (b) X's registration letters on his car's number plate were incorrectly shown as S 1234 (instead of the correct number S 2341). X parked the car immediately behind an identical car belonging to Y, the registration numbers of which are correctly shown as S 1234. Y instructs Garage Z to take his car to their workshop and fit new tyres. Z's employees being reasonably mistake, take X's car to the garage instead, and fitted the new tyres.

[10 marks]

- (c) X contracts with Garage Z to store his car for a month while he is away on holiday.

[5 marks]

Total: [25 marks]

QUESTION 3

Lurco was authorised by Tums George Hotels to sell one of their hotels situated in Siteki. The parties had expressly agreed that Lurco will be entitled to a 10 per cent commission for his services upon a successful sale of the hotel provided that he was the effective cause for the conclusion of the contract of sale with the buyer. He sold it to one Isabel. The said buyer made the purchase and/or acquisition on behalf of ZamaZama Properties, being a partnership business in which Lurco was an active member together with three others. The hotel was sold for the sum of E2, 000 000.00 and there was no dispute whether or not Lurco was the effective cause for the conclusion of the agreement of sale. After the Siteki hotel was sold, Tums George Hotels were paid in full by the buyer. An overly excited Lurco (and expectedly so) went to claim his commission from the seller's management, and he was told in no uncertain terms that no commission would be paid to him, however, no reasons were given to him. As a person lettered in law Lurco has approached you and requests you to advise him on his rights, if any. Discuss.

[25 marks]

QUESTION 4

141

- (a) What is the definition of a hire-purchase agreement as per section 2(1) of the Hire-Purchase Act No.11 of 1969?

[5 marks]

- (b) Discuss the elements of an ordinary hire-purchase agreement contract under the Common Law.

[20 marks]

Total: [25 marks]