

UNIVERSITY OF SWAZILAND

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FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, MAY 2014

TITLE OF PAPER: MERCANTILE LAW I

COURSE CODE: L301

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

- (1) ANSWER ALL FOUR (4) QUESTIONS**
- (2) MARKS FOR QUESTIONS OR PARTS OF A QUESTION ARE SHOWN IN BRACKETS**

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QUESTION 1

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One of the essential obligations of a seller in a contract of sale is the duty to deliver the subject matter to the buyer. In so doing, the seller does not undertake to make the buyer the owner of the thing sold but undertakes only to give him free possession (*vacua possession*). The Seller may effect delivery of the thing sold to the buyer in one of two ways, to wit; actual and constructive delivery. Discuss the different types of constructive delivery, sometimes referred to as fictitious delivery, giving examples where possible.

[25 marks]

QUESTION 2

In March 24, 2013, SPM Properties (SPM) contracted with Mr. Moses Motsa to find a purchaser for his Makhaya Building Shopping Complex in Manzini for the price of E17 million. In terms of the contract SPM was to receive 5 per cent commission on the purchase price if a sale was effected. SPM advertised the complex and one Mr Mansoor having seen the advertisement approached SPM, who took him to the property, which he inspected. Mr Mansoor advised SPM that he was prepared to offer E12.2 million for the complex. SPM informed Mr. Motsa but he rejected the offer as too low. On July 22, 2013 Mr. Motsa authorised another firm of estate agents, VJR Agencies (VJR), to find a purchaser for the same price. On July 27, 2013 Mr. Mansoor once again approached SPM with a view to further negotiations with the principal. SPM once again communicated with Mr. Motsa but he refused to negotiate. Mr. Mansoor subsequently saw the advertisement of VJR and approached them. Lengthy negotiations took place between Mr. Mansoor and Mr. Motsa through VJR. As a result of these negotiations a written contract of sale was entered into between the parties on August 12, 2013 providing for a purchase price of 15.9 million. On discovering these facts, SPM sued Mr. Moses Motsa for commission on the sale. Discuss fully.

[25 marks]

QUESTION 3

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Fully discuss what constitutes the contents of a hire-purchase agreement in terms of the Hire-Purchase Act No.11 of 1969.

[25 marks]

QUESTION 4

Write short informative notes on the following:

- (a) *Vacua possessio*;
- (b) Implied warranty against latent defects;
- (c) The Aedilitian remedies;
- (d) Difference between a special and general power of attorney; and
- (e) *Negotiorum Gestio*.

[5 marks each]

Total: [25 marks]