

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION PAPER (MAIN), MAY 2016**

**TITLE OF PAPER : MERCANTILE LAW 1**

**COURSE CODE : L301**

**MARKS ALLOCATED : 100 MARKS**

**INSTRUCTIONS : 1. THIS PAPER CONSISTS OF SIX (6) QUESTIONS.  
2. ANSWER ANY FOUR (4) QUESTIONS.**

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BY THE INVIGILATOR**

### QUESTION ONE

“There is no doubt... that the basic common law principle 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 materialises a ‘juristic ghost’”.

Per Nestadt J. in Strydom v Protea 1979 (2) SA 206 (T)

Explain and critically discuss the quotation, referring to authority.

[25 marks]

### QUESTION TWO

Mnisi 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 evaluator 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 that they resold the car at E30, 000.

Referring to authority, advise Mnisi and Dube as to their rights and remedies, if any.

[25 marks]

### QUESTION THREE

Matse saw a Toyota Lucida in Al Quim’s showroom 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 E3, 000 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 FOUR

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 FIVE

Sipho, Dube and Futhi formed a partnership styled "Daily Manna", near the Manzini bus rank. It was to deal in food take-aways. Sipho, a professional caterer was to avail his expertise; Dube, a Business Accounting graduate, would take care of the partnership's accounting book; while Futhi would contribute E37, 000 to the partnership account.

Subsequently, Futhi contributed E17, 000, and promised to pay the balance very soon. At the end of the month the business failed to pay rent, Sipho and Dube then insisted that Futhi pays up. It was also clear, however, that one reason the business was going down was that Dube had neglected to keep the books as he promised.

In the meantime, Futhi talked to her confidante, Frank Mlangeni, a Cabinet Minister in government, who went with her to Swazi Bank Ltd, Manzini and applied for a loan of E60, 000 for the partnership. Out of respect for Mlangeni, whom the bank manager believed was a partner in "Daily Manna", and without going through the formalities, the bank granted the loan.

Sipho and Dube were pleasantly surprised to see the money on their account, but emphasised to Futhi that they were not party to the loan which had been obtained without their authorisation. Nevertheless, they agreed to use it to settle partnership debts without prejudice to that position. However, the business continued to decline, and they were unable to service the loan. Swazi Bank then instituted proceedings against Frank Mlangeni and each of the partners to recover the money.

- (a) Advise Frank Mlangeni and the partners fully.

[10 marks]

- (b) Sipho, who, unlike all the others, has fulfilled all his obligations wonders what remedies, if any, are available to him against Futhi and Dube. Advise him.

[15 marks]

### QUESTION SIX

Write short informative notes on the following:

- (a) The remedy of stopping goods in *transitu*.

[5 marks]

- (b) The difference between implied authority and ostensible authority.

[5 marks]

- (c) Partner's liability for partnership debts of an insolvent partnership.

[5 marks]

- (d) The relationship between co-sureties.

[5 marks]

- (e) Computation of seller's damages where there is no market price.

[5 marks]