

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

TITLE OF PAPER : MERCANTILE LAW 1

COURSE NUMBER : L 301

MARKS ALLOCATED : 100 MARKS

INSTRUCTIONS:

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

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION ONE

Explain and critically discuss the possible functional utility of the partnership business form in the socio-economic circumstances of Swaziland.

[25 marks]

QUESTION TWO

- (a) With the aid of decided cases and/or illustrations, carefully distinguish between implied authority and ostensible authority in the context of the agency contract

[10 marks]

- (b) A without any authority buys goods from T, representing to the latter, "I am acting on behalf of the Mayor of Matsapha". T believes that A is acting on behalf of Prince Fakudze, who calls himself the Mayor of Matsapha. A, however, meant Nathan Chambers, a young business tycoon who boasts that he will be the first Mayor of Matsapha. Later that day Nathan Chambers, who had learnt of the deal A had made, met Maria, the wife of T and said to her, "I hear that A has made a fantastic deal with your husband on my behalf. Tell T that I am ready and willing to take half the goods as I cannot afford to pay for everything". Much later, Prince Fakudze also met Maria and said to her, "I hear A has made a very good deal with your husband on my behalf. Tell him that I am going through with it". T is now at his wit's end and comes to you for advice. Advise him.

[15 marks]

QUESTION THREE

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 of fact that the collision was attributable solely to the negligence of Sidumo.

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

[15 marks]

(b) In line with your answer in (a) above, 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]

QUESTION FOUR

Explain and critically discuss Section 2 (1) of the Hire-Purchase Act 11/1969, with specific references to leases.

[25 marks]

QUESTION FIVE

Having read the glossy dossier about the successful world-wide investment activities of Ultra Finance Ltd (hereinafter Ultra), local tycoon Alfred Manana was keen to invest in Ultra. He enquired from Ultra's bankers, Standard Bank Ltd, Manzini branch about Ultra's credit-worthiness and credibility of their investment programme. Stanley Hewitt, the Manzini Branch Manager, wrote back to say Ultra had an impeccable record, and that Ultra's products were genuine and reliable. Manana then asked that the Bank becomes surety and co-principal debtor in respect of E500, 000 which he intended to deposit in Ultra for three years. Manager Hewitt agreed without hesitation. The relevant documentation was then worked out and the said investment in Ultra was effected.

Six months later, however, Ultra was declared insolvent and was wound up. Subsequent investigations indicated that one Mrs Rhoda Trublood, the Managing Director and majority shareholder of Ultra, was Stanley Hewitt's eldest daughter who had also borrowed heavily from Hewitt to start the company.

Manana now seeks to sue Standard Bank Ltd for the E500, 000. Advise him fully.

[25 marks]

QUESTION SIX

Write short informative notes on the following:

- (a) Agency of necessity. [5 marks]
- (b) How insolvency affects a partnership. [5 marks]
- (c) Contracts for the benefit of third parties. [5 marks]
- (d) The difference between a guarantee and a suretyship. [5 marks]
- (e) The retiring partner's right of access to partnership books after the termination of the partnership. [5 marks]