

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN), MAY 2017

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

State and explain the circumstances under which a partnership may be validly terminated. In your answer, refer to case law.

[25 marks]

QUESTION TWO

Musa agreed to supply Nazarene Hospital with 400 bags of peanuts. Each bag was 50 kg, and the price was E 700 per bag. Delivery was to be by 30th January, 2017. Due to poor rains, however, Musa had a poor harvest of peanuts and it was also hard to get peanuts on the open market. Thus, by 30th January, 2017 Musa, who was very apologetic, was only able to deliver 220 bags of peanuts. 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 peanuts ready.

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

Referring to authority, discuss all the legal issues.

[25 marks]

QUESTION THREE

Discuss the content and effectiveness of the statutory regulation of hire purchase transactions in Swaziland.

[25 marks]

QUESTION FOUR

(a) With reference to case law, 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 wits' end and comes to you for advice. Advise him.

[15 marks]

[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

Briefly discuss the following:

(a) implied warranty of authority;

[6 marks]

(b) a partnership *en commandite*;

[6 marks]

(c) *constitutum possessorium*;

[6 marks]

(d) ostensible authority.

[7 marks]

[25 marks]