

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION, JULY 2018

TITLE OF PAPER : AGENCY & PARTNERSHIPS

COURSE CODE : LAW 306

MARKS ALLOCATED: 100 MARKS

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

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GIVEN 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

(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]

[25 marks]

QUESTION THREE

“In modern mercantile practice the entity theory, by and large, represents the reality of partnership”.

Do you agree? Explain, with reference to case law.

[25 marks]

QUESTION FOUR

“Ratihabitio mandatur comparatur.”

Is this an accurate statement of the principle of the agency law in Swaziland? Explain, referring to illustrations and cases.

[25 marks]

QUESTION FIVE

Computronics Ltd. had, since January 2010, every once in a while supplied all kinds of computers to Dube’s shop at Manzini. Dube’s assistant in the shop was his son, Vuyo. Vuyo’s instructions were that all computers worth E 3 000 each, or more, would be exclusively handled by Dube who would also sign delivery and order books therefor.

However, in February 2012 and March 2014, Vuyo had received three computers on each occasion worth E 3 050 each, for the shop, in his father’s absence. The father had thereafter approved the purchases after careful scrutiny.

On September 2016, Computronics Ltd. again delivered six computers worth E 3 475 each. Dube was present at the shop but was writhing under the grip of a terrible stomach ache. Vuyo received the computers and signed all relevant documents binding his father in respect of the supply. When he recovered, a few hours later, Dube reprimanded Vuyo for having signed in the six computers. He also called Computronics Ltd. and told them that his son had accepted the computers without his authority, and that they should collect them back. They refused to. They now seek to be paid.

Advise Computronics Ltd. referring to authority.

[25 marks]

QUESTION SIX

Briefly discuss the following:

- (a) Partner’s liability for partnership debts of an insolvent partnership, **[5 marks]**
- (b) Agency of necessity, **[5 marks]**
- (c) *Del credere* agents, **[5 marks]**

(d) How insolvency affects a partnership,

[5 marks]

(e) The retiring partner's right of access to partnership books after the termination of the partnership.

[5 marks]

[25 marks]