

**UNIVERSITY OF ESWATINI**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**EXAMINATION PAPER, JUNE 2019**

**(MAIN)**

**TITLE OF PAPER : MERCANTILE LAW I**  
**COURSE CODE : L301**  
**TIME ALLOWED : 3 HOURS**  
**MARK ALLOCATION : 100 MARKS**

**INSTRUCTIONS : ANSWER QUESTION ONE WHICH  
IS COMPULSORY, AND ANY  
THREE (3) QUESTIONS OF  
YOUR CHOICE**

**THIS EXAMINATION PAPER IS NOT TO BE OPENED UNTIL  
PERMISSION HAS BEEN GRANTED BY THE PROCTOR**

## Question One

Bricks, an intrepid Mozambican lobsterman and speculator, contracted in writing to sell Sputnik, also a speculator and with a shrewd and keen eye on the global fisheries market, one thousand kilograms of fresh lobster at E50/kilogram during the following sea harvest season which speculators and forecasters had speculated would be a particularly bad yield season. Bricks also contracted in writing to sell to Sputnik delicate and expensive *Russian caviar* from the Caspian sea at E1000/kilogram to be delivered at the same time as the lobsters. (The caviar is especially sourced from unfertilized salt-cured fish eggs from rare fish in the Caspian sea called Sturgeon whose coast is shared by countries such as Russia, Azerbaijan, Iran, Kazakhstan, and Turkmenistan).

A few months later, when lobsters became unexpectedly plentiful causing the market price to decrease (due to market forces of supply and demand), Sputnik tried to resile from the sales contract with regard to the lobsters. He argued that the sales contract was not enforceable because as far as the lobsters were concerned, they had not yet been caught when the contract was made.

A few months later, due to the enormous decrease of Caspian sea sturgeon as well as political unrest in Russia affecting the fisheries market, it was common practice for traders to export salmon roe (the unfertilized eggs of Salmon fish which are similar to caviar but are not the precisely the same and are far more cheaper) mixed with a small amount of caviar. Keen fisheries traders and buyers knew of this practice. The mixed 'caviar' would not be noticeable when placed on the plates of most consumers at a restaurant, but the shelf life of the original caviar would be affected by the Salmon roe which rots easily. Sputnik sought to resile from the sales contract on the basis that the caviar delivered by Bricks to him was defective.

Closely referring to any decisional law and principles, advise Sputnik of the legal issues implicated in this factual matrix. In your counsel, partition your response into two parts, relating to the legal position with regard to the:

a) Lobsters - 10 Marks

b) Caviar - 15 Marks

**Total 25 Marks**

### **Question Two**

Muzi and Samantha who regard themselves as “besties” since first year of Law school are recent LLB graduates of the University of Eswatini. As besties they have always dreamed of pursuing a joint career together in some way after ‘varsity’ but were unsure on the modalities and life’s fortunes thereafter. This is because Muzi has always been intent on pursuing a law career as an attorney, while Samantha has always been business minded (and it helped her vision that her father died and made her the sole inheritor of a vast restaurant chain business).

Two years after graduation, Muzi is a recently admitted attorney considering opening his own law firm and Samantha is establishing her own name in her late father’s restaurant business (now hers) using her law school knowledge and skills.

They meet one day to thrash out the possibility of working together professionally (and not just socially!) by considering the feasibility of some sort of *partnership* or *joint venture* between themselves as individuals and/or their respective businesses.

With reference to the law and requirements relating to **partnerships** and **joint ventures** explain to the ‘besties’ what might be the best course of action.

**Total 25 Marks**

### **Question Three**

Explain the following (5 Marks each):

a) *huur gaat voor koop*

- b) *“the risk must attach”*
- c) CIF Sales
- d) *del credere agent*
- e) *Delegatus non potest delegare*

**Total 25 Marks**

**Question Four**

Nomthandazo gives Nomsa an option to purchase her business on credit. The option expires one month later. Nomsa goes overseas and her friend, Grant realizes that the option will expire prior to Nomsa’s return. Being unable to make contact with Frank, and believing that Nomsa would want to exercise the option, Grant exercises the option on Nomsa’s behalf. Nomsa returns from overseas a day after the expiry date of the option, and ratifies Grant’s actions.

Advise Nomthandazo, who no longer wishes to sell to Nomsa what her legal position might be with regard to principles of agency.

**Total 25 Marks**

**Question Five**

The distinction between agency implied from the fact and one of estoppels (ostensible agent) is nuanced. Referring to relevant case authorities, provide a comprehensive discussion that explains these two types of agency.

**Total 25 Marks**