

UNIVERSITY OF ESWATINI

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JANUARY 2019

TITLE OF PAPER : SALE, HIRE PURCHASE & SURETYSHIP

COURSE CODE : LAW 305

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 GIVEN
BY THE INVIGILATOR**

QUESTION ONE

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

[25 marks]

QUESTION TWO

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 THREE

(a) Critically distinguish between a surety and a guarantee.

[10 marks]

(b) Referring to authority, discuss the legal position of a co-surety who has paid more than his aliquot share, when the whole debt is not yet paid.

[15 marks]

[25 marks]

QUESTION FOUR

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]

[25 marks]

QUESTION FIVE

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 SIX

Write short informative notes on the following:

- (a) The remedy of stopping goods in *transit*, [7 marks]
 - (b) *Constitutum possessorium*, [6 marks]
 - (c) The relationship between co-sureties, [6 marks]
 - (d) The benefit of excussion. [6 marks]
- [25 marks]