

**UNIVERSITY OF ESWATINI**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**EXAMINATION PAPER (MAIN), 2019**

**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

“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 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

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

[25 marks]

### QUESTION FOUR

“*Ratihabitio mandatur comparatur*” (i.e. ratification is equivalent to authority).

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

[25 marks]

### QUESTION FIVE

On 1<sup>st</sup> October, Van Wyk, an art dealer in Manzini appointed Thembi as his agent in Nhlanguano, and that same day, he sent a letter to Artistes Ltd., a company dealing in paintings in Nhlanguano, confirming Thembi's appointment, and her authority to buy and sell pictures on his behalf. In fact, Thembi is under express instructions not to deal with any pictures allegedly painted by Warholle Painters because of the risk of forgery. On 10<sup>th</sup> November, Thembi, purporting to act on behalf of Van Wyk, contracts with Artistes Ltd. to buy from it "the Pink Coyote", a genuine Warholle painting, for E 65 000. On 12<sup>th</sup> November, Thembi visits the office of Mbabane International Galleries and without mentioning Van Wyk, contracts to sell "the Pink Coyote" for E 80 000. Thembi intends to keep the profits for herself. On 16<sup>th</sup> November, Artistes Ltd. discovers what Thembi is trying to do and tells Van Wyk that it intends to withdraw from the contract and keep "the Pink Coyote". On 17<sup>th</sup> November, Van Wyk purports to ratify Thembi's actions of 10<sup>th</sup> and 12<sup>th</sup> November.

Consider the rights and liabilities of all the parties.

[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) Ways in which goodwill may be shared in a partnership, [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]

[5 marks]

[25 marks]