



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW 305

TITLE OF PAPER: SALE, HIRE PURCHASE & SURETYSHIP

TIME ALLOWED: 3 HOURS

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## Instructions

1. This paper consists of SIX (6) questions.
2. Answer any FOUR (4) questions.

## Special Requirements

None

## Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

### **QUESTION ONE**

Explain and critically discuss Section 2 (1) of the Hire-Purchase Act 11/1969, with specific references to leases.

**[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 30<sup>th</sup> 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 30<sup>th</sup> 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**

(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**

Recently, Winex Ltd, a wine merchant, had the following stock at its warehouse:

- 100 bottles of 1960 Chateau Orezy;
- 200 bottles of 1970 Chateau Pimperl, which, unknown to Winex Ltd., were the last bottles of that vintage remaining unconsumed anywhere in the world;
- 350 bottles of 1980 Chateau Chauvelin; and
- Assorted other wines.

Winex Ltd. then contracted to sell:

- 100 bottles of 1960 Chateau Orezy to Busie;
- 200 bottles of 1970 Chateau Pimperl to Stan;
- 50 bottles of 1980 Chateau Chauvelin to Fikile, who paid the price of E10 000; and
- 300 bottles of 1980 Chateau Chauvelin to Mnisi, which were delivered to him on payment of the purchase price. A tasting expert then examined a sample of 30 bottles (out of the 300) and found that the quality had deteriorated badly. Winex Ltd. explained that they did not know how that had come about.

Yesterday, as Winex Ltd.'s lorry was delivering the 50 bottles to Fikile, it crashed, and all the wine on board was lost. Meanwhile, last night, a fire destroyed Winex Ltd. warehouse and all its contents.

Advise Busie, Stan, Mnisi and Fikile.

**[25 marks]**

## **QUESTION FIVE**

Having read the glossy dossier about the successful worldwide 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**

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]**