

Course Code: L301 (M) 2011

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY 2011**

**TITLE OF PAPER : MERCANTILE LAW I**

**COURSE CODE : L301**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS :**

- (a) THE PAPER CONSISTS OF SIX QUESTIONS.**
- (b) ANSWER ANY FOUR QUESTIONS.**

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### **QUESTION 1**

It has been said that  
Glonfico v ABSA Bank, 2001 (2) SA 1048 is

definitely better law than NBS Bank v Cape Produce Co Ltd., 2002 (1) SA 396.

Do you agree? Explain.

[25 Marks]

### **QUESTION 2**

“On the basis of the Entity Theory, partnership may be the nucleus of a new business formation that will mobilise small scale enterprises for economic development in Swaziland.”

Per an LL.B. III student at UNISWA.

Explain and critically discuss the quotation.

[25 Marks]

### **QUESTION 3**

Having examined a black Porsche, 1954 model, at Siphos garage, Sizwe paid a deposit of E65,000 for the same, being ten percent of the price. It was the only Porsche of that type and model the world over. “I’ll take the car,” he said, “but the steering needs some attention”.

Siphos agreed to fix the steering within a week.

An hour later, Mazwi innocently paid E750,000 to Siphos for the same Porsche, and drove it away.

Six days later, Matt paid Mazwi E800,000 for the Porsche which he, in turn, sold to Buhle.

Siphos then told Sizwe when he came for the car that, he could only refund the E65,000 to him as the car had been taken. Sizwe insisted he wanted only the car. When Mazwi heard of Sizwe’s claim, he feared it would disturb his customer, Matt. He thus paid the E65,000 to Sizwe. The latter accepted it, but still sued Buhle for “my Porsche”.

Discuss all legal issues and advise Mazwi, who wants to sue Siphos for the E65,000.

[25 Marks]

#### **QUESTION 4**

Futhi acquired a computerised sewing machine from Machine Sales (Pty) Ltd, Matsapha, (hereinafter Machine Sales) on the following terms:

- (a) No deposit shall be payable.
- (b) The total price of E24,000, shall be paid in monthly instalments of E1000 payable by the 7<sup>th</sup> day of each month.
- (c) Purchaser may at any time terminate the contract upon payment of depreciation, being the difference between 60 percent of the unpaid balance and the amount paid.
- (d) Upon failure to pay an instalment, Machine Sales shall be automatically entitled to repossess and dispose of the sewing machine as they see fit.
- (e) Machine Sales shall remain the owners of the sewing machine until payment of the last instalment.
- (f) On payment of the 24<sup>th</sup> instalment, purchaser shall acquire ownership of the machine.
- (g) All liability for breach of any term, condition or warranty is excluded.
- (h) Instalments paid to machine sales shall not be refundable.

After Futhi had paid six instalments regularly, a major defect manifested in the digital system. Futhi then told Machine Sales that unless they repaired or replaced the machine, she wanted a refund of all money she had paid. In return, Machine Sales insists she is in breach and that they would enforce the contract.

Assuming the Hire Purchase Act, 1969, is applicable advise Machine Sales fully. [25 marks]

#### **QUESTION 5**

Write short informative notes on the following:

- (a) c.i.f. contracts; (5 marks)
  - (b) the benefit of excussion; (5 marks)
  - (c) the rights of a creditor against a surety and co-principal debtor. (5 marks)
  - (d) principal's right to revoke a power of attorney coupled with an interest; (5 marks)
  - (e) difference between a guarantee and a suretyship. (5 marks)
- [ 25 marks]

**QUESTION 6**

Patel is Managing Partner in a firm which also includes Musa, Xolile and Blessing. The firm runs a property-marketing and property-developing consultancy.

For quite sometime, however, relations between Patel and the other three partners have been strained. Indeed, at times, Patel does not consult with, or listen to the other partners on major issues of management. This is contrary to the firm's partnership deed.

Recently, Patel employed a conveyancer, again, without prior consultation with the other partners. The firm now owes the Conveyancer E125,000 for services rendered. He has instituted legal action against the firm. Musa, Xolile and Blessing argue that as they did not approve of his employment, they can't vote for money to pay him.

Patel himself owes the firm E45,000 in rent, and Musa, who needs money urgently has sued him for that money.

Advise the partners fully, referring to authority.

[25 Marks]