

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

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SUPPLEMENTARY EXAMINATIONS, JULY 2011

TITLE OF PAPER : **MERCANTILE LAW I**

COURSE CODE : **L 301**

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

INSTRUCTIONS : **A) THE PAPER CONSISTS OF SIX QUESTIONS.**

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B) ANSWER ANY FOUR QUESTIONS.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR

QUESTION 1

Futhi, a qualified teacher, was married out of community of property to one Muzi, an Accountant in government. Futhi agreed, at the instance of her husband, to stay at home and devote herself entirely to the upbringing of their two sons. It was also agreed between the two spouses that Muzi should resign from his position in government and begin running a small restaurant.

Futhi withdrew E30,000 from her personal savings and gave it to Muzi to start the restaurant. Muzi added E40,000 from his account, and started the business. With an annual net income of E350,000, the business had been a great success.

However, due to Muzi's marital infidelity, Futhi has commenced divorce proceedings against Muzi. She demands for an equal apportionment of the net proceeds and assets of the partnership business between herself and Muzi. Her argument is that the business is a family partnership run jointly by her and Muzi, and that because mutual trust and confidence has been irreparably damaged, the partnership should be dissolved.

Advise Muzi fully, referring to authority.

[25 MARKS]

QUESTION 2

"Ratihabitio mandato comparatur"

(D46.3.12.4(Ulpian))

Discuss.

[25 MARKS]

QUESTION 3

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

- 100 bottles of 1960 Chateau Orczy;
- 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;
- Assorted other wines

Winex then contracted to sell: 100 bottles of 1960 Chateau Orczy 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; 300 bottles of 1980 Chateau Chateau Chauvelin to Mnisi, which were delivered to him on payment of the 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 of wine to Fikile, it crashed, and all the wine on board was lost. Meanwhile, last night, a fire destroyed Winex Ltd's warehouse and all its contents.

Advise Busie, Stan, Mnisi and Fikile.

[25 MARKS]

QUESTION 4

It has been suggested that the Hire Purchase Act 11/1969, serves no useful purpose.

Do you agree? Explain, referring closely to the statute itself.

[25 MARKS]

QUESTION 5

Write short, informative notes on the following:

- (a) the difference between a guarantee and a suretyship; (5 marks)
- (b) the difference between implied authority and ostensible authority; (5 marks)
- (c) negotiorum gestio; (5 marks)
- (d) Creditor's rights against a surety who is also a co-principal debtor; (5 marks)
- (e) the difference between constitutum possessorium and traditio brevi manu. (5 marks)

QUESTION 6

Score Furnishers Ltd sold a piano to Siphon on "hirepurchase terms", at E3,500, payable in 20 monthly instalments of E175 each. However, no deposit was payable, and on payment of the first instalment, Siphon was given possession of the piano. Thereafter, he paid 5 instalments regularly, but the sixth instalment was 2 weeks late. Thus, representatives of Score Furnishers Ltd went to Siphon's and repossessed the piano in his absence. They resold it to another customer a day later.

Three days later, Siphon went to Score Furnishers Ltd's premises and complained to the Manager about the repossession. The Manager, in turn, showed Siphon clauses in the hirepurchase agreement which Siphon had signed (without reading). The clauses stated thus:

- (a) For the avoidance of any doubt, the parties hereby agree that this contract is a lease, but that ownership may pass to Siphon, the lessee, anytime, on payment of the twenty monthly instalments of E175 or the equivalent lump sum.
- (b) In case of default in respect of any instalment due, Score Furnishers Ltd may at any time repossess the piano, and the amount paid, i.e. the rent, shall not be refundable.
- (c) The lessee may at any time terminate the agreement by giving due written notice to the lessor, and upon payment of 20 percent of the unpaid balance as depreciation.

Referring to relevant authority, advise Siphon as to his rights and remedies.

[25 MARKS]

Prof. J. Barbero
 (Signature)
 2/06/11