

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN) MAY 2018

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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BY THE INVIGILATOR**

QUESTION ONE

“The doctrine of undisclosed principal is theoretically anomalous and largely unacceptable in law”.

Do you agree? Explain, with reference to case law.

[25 marks]

QUESTION TWO

Mandla is a well-known property developer. He instructs Thuli, an attorney from Mbabane, to purchase tracts of land at Thembelihle for the purpose of building a housing estate. It is agreed by the parties that, in the event of a successful land deal, Thuli would be paid a commission reflecting 10% of the purchase price.

A few weeks later, Thuli rings to inform Mandla that she had secured four parcels of land at E 8 million, total cost. Mandla promptly pays the price plus 10% commission to Thuli. Mandla has now discovered that the land he has purchased at Thembelihle in fact belongs to a partnership of which Thuli is a member. Mandla has also discovered that the going rate for comparable plots of land at Thembelihle is E 1.5 million per plot and not E 2 million.

Advise Mandla.

[25 marks]

QUESTION THREE

Mnisi bought his Cressida (2001 model) from Al Qaim Motors, Manzini in 2006 at E 42 000. Recently, he took it to Excellent Cars Ltd, well-known car dealers in Mbabane, and told them he wanted to sell his car, but that they should not put it in the show room until he heard from his evaluator about the car's correct value. They agreed.

However, as soon as Mnisi left, they put the car in the show room and sold it to Patel at E 30 000. Patel, in turn, resold the car to Dube at E 35 000. Dube then immediately took it to Leites for a general mechanical assessment. There it was discovered that though the engine was a 2001 one, the chassis was 1996 and the body 1998. Indeed, Leites noted that this was the engine which had been stolen from them in 2002. They thus sought to detach it or recover it by court action.

In the meantime, Mnisi returned to Excellent Cars Ltd a fortnight later and told them the correct car value was E 52 000. He was shocked to learn that they resold the car at E 30 000.

Referring to authority, advise Mnisi and Dube as to their rights and remedies, if any.

[25 marks]

QUESTION FOUR

Sipho, Dube and Futhi formed a partnership styled “Daily Manna”, near the Manzini bus rank. It was to deal in food take-aways. Sipho, a professional caterer was to avail his expertise; Dube, a Business Accounting graduate, would take care of the partnership’s accounting books; while Futhi would contribute E 37 000 to the partnership account.

Subsequently, Futhi contributed E 17 000, and promised to pay the balance very soon. At the end of the month the business failed to pay rent, Sipho and Dube then insisted that Futhi pays up. It was also clear, however, that one reason the business was going down was that Dube had neglected to keep the books as he promised.

In the meantime, Futhi talked to her confidante, Frank Mlangeni, a Cabinet Minister in government, who went with her to Swazi Bank Ltd, Manzini and applied for a loan of E 60 000 for the partnership. Out of respect for Mlangeni, whom the bank manager believed was a partner in “Daily Manna”, and without going through the formalities, the bank granted the loan.

Sipho and Dube were pleasantly surprised to see the money on their account, but emphasised to Futhi that they were not party to the loan which had been obtained without their authorisation. Nevertheless, they agreed to use it to settle partnership debts without prejudice to that position. However, the business continued to decline, and they were unable to service the loan. Swazi Bank then instituted proceedings against Frank Mlangeni and each of the partners to recover the money.

- (a) Advise Frank Mlangeni and the partners fully.

[10 marks]

- (b) Sipho, who, unlike all the others, has fulfilled all his obligations wonders what remedies, if any, are available to him against Futhi and Dube. Advise him.

[15 marks]

[25 marks]

QUESTION FIVE

Futhi, a qualified teacher, was married out of community of property to one Phiri, 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 Phiri should resign from his position in Government and begin running a small bakery.

Futhi withdrew E 15 000 from her personal savings and gave it to Phiri to start the bakery. Phiri added E 25 000 from his account and started the business. With an annual net income of E 200 000, the business has been a great success.

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

Advise Phiri.

[25 marks]

QUESTION SIX

Write short informative notes on the following:

- (a) Implied warranty of authority, [5 marks]
 - (b) Termination of an agency coupled with an interest, [5 marks]
 - (c) Partnership *en commandite*, [5 marks]
 - (d) The sharing of goodwill on termination of a partnership, [5 marks]
 - (e) Ostensible authority. [5 marks]
- [25 marks]