

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2005**

220

TITLE OF PAPER : MERCANTILE LAW II
COURSE CODE : L 405
TIME ALLOWED : THREE (3) HOURS
**INSTRUCTIONS : ANSWER ANY FOUR (4)
QUESTIONS.
ALL QUESTIONS CARRY
EQUAL MARKS.**

**THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1

Discuss the liability of Allied Bank Ltd. in the following cases.

(a) Cash Shongwe, a legal practitioner in Manzini, maintains an active current account with Allied Bank Ltd. His confidential secretary, S, who is entrusted with the safekeeping of his cheque books, steals one of the cheques. She draws the cheque on Allied Bank for E15, 000, payable to herself. She then expertly forges the signature of her boss, Cash Shongwe, and presents it for payment at the Mbabane branch of the Allied Bank. The bank pays S. the E15 000, and debits the account of Cash Shongwe.

(7 marks)

(b) Dr Buhle, a medical practitioner in Manzini, also maintains an active current account with the Manzini branch of the Allied Bank. Alicia Peters, his confidential secretary, presents to him for signature two cheques drawn on the Allied Bank for E11 000 and E 7 000. The cheques were respectively drawn in favour of Victor Vilakati, a trader in animal skins in Steki, and Cash Shongwe, a legal practitioner in Manzini, in payment for goods and services that the two payees had supposedly rendered to Dr. Buhle. Dr. Buhle signs the cheques. Alicia Peters negotiates the two cheques to Vuma Peters, her brother and accomplice, by forging the signatures of Victor Vilakati and Cash Shongwe. Vuma Peters cashes the cheques at the Manzini branch of the Allied which debits Dr. Buhle's account with the amounts. (10 marks)

(c) Ayanda Dlamini draws a cheque on Allied Bank Ltd. with which he has a current account, for E7 000, payable to Jan Simelane. The cheque is stolen by Don Davies who presents it to the Allied Bank for payment. The bank asks Don Davies to sign the cheque at the back, and he does this by forging the signature of Jan Simelane. The Allied Bank has debited the account of Ayanda Dlamini.

(8 marks)

[Total marks 25]

Question 2

Vusi Zondi is a farmer at Tikhuba. Over a period of three years he obtained various farming materials from the Swaziland Builders Co-operative (SBC) on credit. The total sum for the materials now stands at E90 (ninety Emalangeni). The SBC has sent him several requests for payment but he has consistently ignored them. Vusi also owes Tractor World (Pty) Ltd. an amount of E200,000 (Two hundred thousand Emalangeni) for two tractors he bought on credit

three years ago. He also owes the Swazi Bank an amount of E150,000 (One hundred and fifty thousand Emalangeni) in respect of money advanced to him over the past four years.

Wishing to put his house in order, he has negotiated a deal with the Swazi Bank in terms of which he would sell the two tractors and use the proceeds to pay off his debt to the bank and the bank would then give him a fresh loan for the new planting season. He hoped that this arrangement would give him the chance to generate a bounteous harvest so that he could pay the other creditors.

The SBC, having learnt of the deal between Vusi and the bank, has now obtained a judgment in its favour from the High Court against Vusi in respect of the sum of money he owes the co-operative.

Advise Tractor World (Pty) Ltd. Swazi Bank as well as SBC.

[25 marks]

Question 3

(a) What do you understand by the doctrine of **subrogation**? What socio-economic role does it play in the law and practice of insurance? (10 marks)

(b) Gwebu owns a large house in Manzini. He has taken out an insurance policy against fire in respect of the house with Mbabane All Purpose Insurance Company Ltd. At the time he took out the insurance policy, the house was used as a dwelling house for himself and his family.

The previous policy has now expired and Gwebu has filled out a fresh proposal form for the renewal of the policy on 10th May 2000. In July 2000, Gwebu's family moved to Vuvulane and Gwebu gave the house to his sister for use as a brothel and a marulu bar.

In the proposal form there was the following standard question: "To what use is the house to be put?" Gwebu's answer was: "dwelling house." The Insurance Company promptly renewed the policy.

On 15th November 2000, there was a fire which destroyed the house. Gwebu now seeks to recover on the policy but the Insurance

Company which has discovered that the house was in fact being used as a brothel, has refused to pay.

Is Gwebu entitled to recover on the policy? (15 marks)

[Total marks 25]

Question 4

- (a) What are the basic functions of a bank? (5 marks)
(b) Define "money" (5 marks)
(c) List and briefly define any 5 qualities of money (5 marks)

(d) With the aid of *Great Western Railway Co. Ltd. v London & County Banking Ltd.* [1901] A.C. as well as *Commissioners of Taxation v English and Australian Bank* [1920] AC 683, discuss how the courts determine who is a "customer" of a bank. (10 marks)

[Total marks 25]

Question 5

- (a) Define "general" and "special" crossing of cheques. (4 marks)
(b) Discuss the legal effect of,
(i) crossing a cheque **specialy**, (3 marks)
(ii) crossing a cheque **generally** and adding the words "not negotiable", (4 marks)
(iii) crossing a cheque **generally** and adding the words "account payee only" (4 marks)

(c) With the aid of the case of *Standard Bank of South Africa v Sham Magazine Centre* 1977 (1) SA 484 (A) discuss the various ways in which a drawer may render a bill (e.g. a cheque) completely and absolutely non-transferable. (10)

[Total marks 25]

Question 6

- (a) "Students are taught at an early stage of their studies that it is incorrect to speak of 'all my money in the bank ...' " (per Staughten J. in *Libyan Bank v Banker's Trust Co.* [1989] 3 All E.R. 252.)

With the aid of relevant decided cases, discuss the nature of the legal relationship between a banker and a customer in the light of this statement. (You are required to confine your discussion to the operation of the *current account*) (15 marks)

- (b) With the aid of the leading case of *Transitional Local Council of Randfontein v Absa Bank Ltd.* 2002 2 All SA 13 (W), distinguish between

the contracts of *mutuum* and *depositum* in respect of deposits taken by banks.

(10 marks)

[Total marks 25]

Question 7

(a) Define the term "value" as used in the Bills of Exchange Act No. 11/1904.

(7 marks)

(b) With the aid of decided cases, discuss the *in duplum* rule as used in the law of banking.

(10 marks)

(c) What contribution, in your opinion, does the case of *LittleJohn v Norwich Fire Insurance Society* 1905 TH 374 make to the law of insurance?

(8 marks)

[Total Marks 25]