

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2006**

TITLE OF PAPER : MERCANTILE LAW
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

**(i) List the statutory conditions that the holder of a negotiable instrument must satisfy before he qualifies to be a “holder in due course”.
(5 marks)**

(ii) “To qualify as a holder in due course, one must be a ‘holder’; however, not all holders qualify to be holders in due course.”

**With the aid of relevant decided cases and illustrations, explain this statement.
(10 marks)**

(iii) Vilakazi who owes Bhembe E500 in gambling debts draws a cheque on his bank, Progressive Allied Bank, directing that bank to “pay Mr. Bhembe or order E500” He crosses the cheque generally and adds the words “not negotiable, a/c payee only” within the crossing lines. The next day, Bhembe who owes his landlord, Shongwe, E500 in unpaid rent, indorsed and delivered the cheque to Shongwe. Upon presentment to the bank, the cheque was dishonoured by non-payment for want of funds in the drawer’s account and marked with the words, “refer to drawer”.

Advise Shongwe.

(10 marks)

[Total marks 25]

Question 2

With the aid of relevant decided cases discuss the liability of Allied Bank Ltd. in the ff. cases.

**(a) C, 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, C, 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 C.
(9 marks)**

(b) Dr Buhle, a medical practitioner in Manzini, maintains an active current account with the Manzini branch of the Allied Bank. Alicia Paula, his confidential secretary, presents to him for signature a cheque drawn on the Allied Bank for E11 000, in favour

of Victor Vilakati in payment for goods and services that Victor Vilakati had supposedly supplied to Dr. Buhle. Dr. Buhle signs the cheque. Alicia Paula negotiates the cheque to Vuma Vusa by forging the signature of Victor Vilakati. Vuma Vusa cashes the cheque at the Manzini branch of the Allied which debits Dr. Buhle's account with the amount. (7 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. (9 marks)

[Total marks 25]

Question 3

(a) Define "general" and "special" crossing of cheques. (4 marks)

(b) Discuss the legal effect of,

(i) crossing a cheque specially, (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. (You are required to give a brief but accurate narration of the facts of the *Sham Magazine Centre* case.)

(9 marks)

[Total marks 25]

Question 4

With the aid of decided cases, discuss the importance of documentary letters of credit in the law of banking and international trade.

[25 marks]

Question 5

(a) What are the basic functions of a bank? (5 marks)

(b) List and briefly define any 5 qualities of money (5 marks)

(c) Define "money" (3 marks)

(d) With the aid of the case of *Energy Measurement (Pty) Ltd. v First National Bank of South Africa Ltd*, identify five compelling reasons for the imposition of a duty of care on a collecting banker when opening a new account for a prospective client. (12 marks)

[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

With the aid of relevant decided cases, explain the term "friendly sequestration" as used in the law of insolvency. How do the courts ensure that the legal machinery of sequestration is not abused by applicants acting in collusion with the debtor? [25 marks]

Question 8

On June 12, 1999, Andrew Gule agreed to sell his house in Manzini to Timothy Mthetwa for the sum of E500,000.00. Under the agreement of the sale, title and possession were to pass to Mthetwa after he has tendered the entire purchase price. On July 12 1999, Mthetwa paid Gule E300,000.00 and on August 21st of the same year, he paid the final instalment of E200,000.00. Meanwhile, on July 17th 1999, the house, which was comprehensively insured by the Better Life Insurance Co. Ltd, was damaged by fire and the Better Life Insurance Company paid Gule E400,000.00 compensation for the damage.

When Gule received the E400,000.00 compensation, he proceeded to purchase a brand new Toyota Corona, which he promptly insured with the Better Life Insurance Co. Ltd. On the 22nd of August 1999, Gule went out to celebrate the recent spell of good luck that he has been experiencing.

On his way home after the celebration, a beast belonging to his neighbour, Alex Mbatha, smashed the windscreen of his car, causing a damage amounting to E3,000.00

He put in a claim for the damage to the car and Better Life Insurance Company settled the claim by fitting the car with a new windscreen. Gule then proceeded to sue Mbatha in delict for the damage done to his car. Mbatha contended that having already been compensated for the damage done to his car by the insurers, Gule had been fully compensated for the damage he had suffered.

The Better Life Insurance Co. Ltd which has come into possession of all the facts wishes to initiate legal proceedings against Gule and Mbatha

Advise Gule and Mbatha.

[20 marks]

Does Mthetwa have any claims against any of the parties? (5 marks)

[Total marks 25]