

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
SUPPLEMENTARY 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

(a) What, in your opinion, does the term “value” as used in The Bills of Exchange Act No. 11/1904 mean?

(10 marks)

(b) Abraham Shongwe is an employee of Unique Bank Ltd. Paul Gwebu sent him E500 (five hundred Emalangi) in order to obtain a bill from Unique Bank Ltd for that amount. Shongwe filled out one of the bank’s printed forms in which the bank was the drawee, signed it as drawer and sent it to Paul Gwebu. Although Gwebu knew that Shongwe signed the bill as an agent of Unique Bank, there was nothing on the face of the bill to show this. The Unique Bank has now failed and Gwebu has initiated an action against Shongwe personally. Shongwe denies personal liability on the note, claiming that Gwebu had actual knowledge of the capacity in which he signed the bill. Will his defense succeed? (15 marks)

[Total Marks 25]

Question 2

(a) With the aid of the case of *Littlejohn v. Norwich Union Fire Insurance Society 1905 TH 374* and any other relevant cases you are familiar with, explain the concept of “insurable interest” as used in the law of insurance. (15 marks)

(b) “In order that the insured may claim on a contract of insurance, the risk must attach”.

Explain this principle of the law of insurance with the aid of decided cases. (10 marks)

[25 total marks]

Question 3

Mrs. Mabuza drew a cheque for E10 (ten Emalangi) in favour of Vusimuzi Motors. She however, left a space between the printed words “pay” and the written words “ten Emalangi”

Sabelo, a cashier at Vusimuzi Motors, stole the cheque and altered the name of the payee to Vusimuzi Motsa and inserted the words “one thousand and” before the words “ten Emalangi. He also altered the amount in figures accordingly. He then endorsed the cheque to John Maseko as full and final settlement of outstanding legal fees for services rendered by the latter. John received the cheque on his brother, Busa Maseko’s birthday and decided to endorse the cheque to him as a birthday gift. When Busa received the cheque, he noticed that the figure amount appeared to have been written in a different type of ink when compared with the ink used in writing the amount in words. He however, went ahead to cash the cheque at the

Manzini branch of the Swazi Bank, reasoning that his brother, who was a trained lawyer, would have noticed the defects if any existed. The bank has debited Mrs. Mabuza's account with E1000.10 (one thousand and ten Emalangeni) and she has come to you for advice.

Advise her fully, detailing the legal positions of Sabelo, John Maseko, Busa Maseko as well as the Swazi Bank. [25 marks]

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)

Discuss the statutory conditions that the holder of a negotiable instrument must satisfy before he qualifies to be a **“holder in due course”**. (15 marks)

(b) **“To qualify as a holder in due course, one must be a ‘holder’.**
However, not all holders qualify to be holders in due course.”

Explain.

(10 marks)

[Total marks 25]

Question 6

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?