

**UNIVERSITY OF SWAZILAND  
DEPARTMENT OF LAW  
SUPPLEMENTARY EXAMINATION PAPER  
YEAR 2007**

**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)** 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. (Your answer should not exceed 20 lines) (15 marks)

**(b)** With the aid of the case of *Bank of Baroda Ltd v Punjab National Bank* [1944]2 All E.R.83

Discuss the essential differences between a bill of exchange other than a cheque and a cheque. (10 marks)

[Total Marks 25]

### Question 2

**(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 Emalangeni) 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 3

Discuss the social and economic goals which the law of insurance should promote in a developing country such as Swaziland. Have the recent attempts at statutory regulation attained these goals?

[25 marks]

### Question 4

Mrs. Mabuza drew a cheque for E10 (ten Emalangeni) in favour of Vusimuzi Motors. She however, left a space between the printed words

“pay” and the written words “ten Emalangeni” 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 Emalangeni. 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 any defects if such 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 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

Paul Ginindza is a prominent businessman in Big Bend. He owns a number of farms and five textile factories in the Matsapha Industrial Area. In March 1990, he purchased 30,000 bales of cotton from the Swaziland Cotton Company and wrote a cheque of E120, 000 (one hundred and twenty thousand Emalangeni) payable to the Swaziland Cotton Company. He also wrote another cheque of E10, 000 (ten thousand Emalangeni) payable as school fees to the Siteki Secondary School where his six (6) children were pupils. Both cheques were drawn on the Manzini Branch of National Alliance Bank. The two cheques have been returned unpaid by the bank.

**The Swaziland Cotton Company as well as the Siteki Secondary School has initiated legal proceedings against Ginindza. At the time of presentation of the cheques, Mr Ginindza's account at the bank had a credit balance of E600, 00 (six hundred thousand Emalangen) Mr Ginindza is very angry and bitter. He claims that his business reputation and credit have been irreparably damaged. Discuss the legal remedies available to him.**

**[25 marks]**

**Question 7**

- (a) With the aid of relevant decided cases, discuss how the courts determine the general insolvency of a debtor in the practical cases. (13 marks)**
- (b) Discuss the statutory conditions that a petitioner applying for the voluntary surrender of a debtor's estate must satisfy under the Insolvency Act No 81, 1955 of Swaziland (12 marks)**

**[Total marks 25]**