

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER 2008**

TITLE OF PAPER : **MERCANTILE LAW**

COURSE CODE : **L405**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS : **ANSWER ANY FOUR QUESTIONS.
MARKS FOR EACH QUESTION RE
INDICATED IN BRACKETS.**

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

Question 1

“The development of the *Lex Mercatoria*, as a universal system facilitating international trade, is attributable to the fact that the medieval civil law was not responsive enough to the needs merchant traders.” Discuss.

(25 Marks)

Question 2

(a) Referring to authority, discuss how an agent and an employee may be liable on a bill. (10 Marks)

(b) With the aid of the case of *Standard Bank of South Africa v Sham Magazine Center*, discuss the various ways in which a drawer may render a bill completely and absolutely non-transferable. (15 Marks)

Total (25 Marks)

Question 3

“The goal of the Law of Insolvency should be to protect and reconcile the interests of creditors and at the same time give a fresh start to the insolvent.”

(25 Marks)

Question 4

Referring specifically to the case of *Leyland Shipping Company Limited V Norwich Union Fire Insurance Society*, as well as other relevant authorities, discuss causation in the context of limitation on risk. What, in your opinion, should be the new direction that insurance assumes in present day society? (25 Marks)

Question 5

Write short notes on the following:

- | | |
|---------------------------------|-----------|
| (a) Subrogation | (5 Marks) |
| (b) Insurable Interest | (5 Marks) |
| (c) acts of insolvency | (5 Marks) |
| (d) The duty to show good faith | (5 Marks) |
| (e) Fictitious Payee | (5 Marks) |

Total (25 Marks)

Question 6

Discuss the liability of Southern Bank Ltd in the following:

Johannes Steyn, a businessman in Manzini, maintains an active current account at the Manzini Branch of Southern Bank Ltd. His confidential secretary, Maria Smith, who was entrusted with the safekeeping of his cheque books, stole one of the cheques. She drew the cheque on Southern Bank for the amount of E20,000, payable to herself. She then expertly forged the signature of her boss, Johannes Smith, and presented it for payment at the Siteki branch of the Southern Bank.

The bank honoured the cheque by paying Maria the sum of E20,000 and debited the account of Johannes Steyn.

(25 Marks)