

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER 2009

TITLE OF PAPER : MERCANTILE LAW

COURSE CODE : L405

TIME ALLOWED : THREE (3) HOURS

**INSTRUCTIONS : ANSWER ANY FOUR
QUESTIONS OF YOUR
CHOICE.
MARKS FOR EACH
QUESTION ARE
INDICATED IN BRACKETS.**

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

Question 1

On June 12, 2000, Andrew Gule agreed to sell his house in Manzini to Timothy Mtetwa for the sum of E500,000. Under the agreement of sale, title and possession were to pass to Mtetwa after he has tendered the entire purchase price. On July 12 2000, Mtetwa paid Gule E300,000 and on August 21st of the same year, he paid the final instalment of E200,000. Meanwhile, on July 17th 2000, the house, which was comprehensively insured by Better Life Insurance Co. Ltd, was damaged by fire and the Better Life Insurance Company paid Gule E400,000 compensation for the damage.

When Gule received the E400,000 compensation, he proceeded to purchase a brand new Lexus luxury sedan, which he promptly insured with Better Life Insurance Co. Ltd. On the 22nd of August 2000, Gule went out to celebrate the recent spell of good fortune he had been experiencing.

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

- (a) Gule
- (b) Mbatha
- (c) The Better Life Insurance Company, and
- (d) Mtetwa.

(25 Marks)

Question 2

Write short notes on the following:

- | | |
|---------------------------------|------------|
| (a) Subrogation | (5 Marks) |
| (b) Insurable Interest | (5 Marks) |
| (c) "Value" | (5 Marks) |
| (d) The duty to show good faith | (5 Marks) |
| (e) <i>Holder in-due-course</i> | (5 Marks) |
| Total | (25 Marks) |

Question 3

"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 of the merchants." (*Per Hue Bonati*). Discuss.

(25 Marks)

Question 4

- (a) With the aid of the case of *Bank of England v Vagliano Brothers*, explain how the courts determine in the Law of Negotiable Instruments, whether a particular payee is a "fictitious payee". (10 Marks)
- (b) Discuss the legal effect of crossing a cheque generally and adding the words "not negotiable". (10 Marks)
- (c) "To qualify as a holder-in-due-course, one must be a "holder", but not all holders qualify to be holders in due course." (JTR Gibson) Discuss. (5 Marks)
- (25 Marks)

Question 5

With *close* reference to pertinent decisional law, render an account of the concept of “characterization”

(25 Marks)