

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**

**EXAMINATION PAPER, MAY 2010**  
**(MAIN)**

**TITLE OF PAPER** : **MERCANTILE LAW**

**COURSE CODE** : **L405**

**TIME ALLOWED** : **3 HOURS**

**MARKS ALLOCATED** : **100 MARKS**

**INSTRUCTIONS** : **ANSWER QUESTION ONE WHICH IS COMPULSORY, AND ANY THREE (3) QUESTIONS OF YOUR CHOICE.**

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

**[TURN OVER]**

### **Question 1**

John Smith drew a cheque for Fifty Emalangeneni in favour of Godoba Motors for an oil filter. Being remiss however, he left a space between the printed words "pay" and the written words "Fifty Emalangeneni."

Max, a cashier at Godoba Motors, stole the cheque and altered the name of the payee to Godoba Motsa and inserted the words "One thousand and" before the words "Fifty Emalangeneni". He also altered the amount in figures accordingly. He then endorsed the cheque to Simon Dlamini as full and final settlement of outstanding legal fees for services rendered by the latter.

Simon received the cheque on his brother, Paul Maseko's birthday and decided to endorse the cheque to him as a birthday gift. When Paul 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 Swazi Bank, reasoning that his brother, who was a trained lawyer, would have noticed any defects if such existed. The Bank has debited Mr Smith's account with E1050.00 (One Thousand and Fifty Emalangeneni) and he has come to you for advice.

Advise him fully, detailing the legal positions of Max, Simon Maseko, Paul Maseko and the Swazi Bank as well as the relevant legal relationships.

(25 Marks)

### **Question 2**

With the aid of statutory provisions and case law, critically examine the concept of “value” under the law of Negotiable Instruments.

(25 Marks)

### **Question 3**

(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)

(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.” Discuss. (5 Marks)

(5 Marks)

Total (25 Marks)

### **Question 4**

“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.”

With the aid of the relevant plot line in “The Merchant of Venice”, fully discuss this statement.

(25 Marks)

### **Question 5**

Gwebu owns a large house in Manzini. He has taken out an insurance policy against fire in respect of the house with Mbabane All Purpose Company Ltd. At the time he took out the insurance policy, the house was used as a dwelling house for himself and his family.

The previous policy has now expired and Gwebu filled out a fresh proposal form for the renewal of the policy on 10<sup>th</sup> May 2009. In July 2009, Gwebu's family moved to Vuvulane and Gwebu gave the house to his sister for use as a brothel and marula bar. In the proposal form there was the following standard question: "To what use is the house to be put?" Gwebu's answer was: "dwelling house." The Insurance Company promptly renewed the policy.

On the 15<sup>th</sup> November 2009, there was a fire which destroyed the house. Gwebu now sought to recover on the policy but the Insurance Company which had discovered that the house was in fact being used as a brothel, refused to pay.

Was Gwebu entitled to recover on the policy? (25 Marks)

### **Question 6**

Write short notes on the following:

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