

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY 2011

235

- TITLE OF PAPER** : **MERCANTILE LAW**
- COURSE CODE** : **L405**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- (i) **ALL CANDIDATES MUST ANSWER QUESTION 1 (COMPULSORY)**
 - (ii) **ANSWER ANY OTHER THREE (3) OF THE REMAINING QUESTIONS.**
 - (iii) **ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - (iv) **IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION, AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1

Musa Dlamini holds a current account with ABC Bank Limited. He buys a motor vehicle from Vusi Nxumalo for E25,000-00. He issues a cheque for E25,000-00 drawn on his bank in payment. The cheque is drawn up and made payable to "Vusi Nxumalo or Order". He crosses the cheque and marks it "Not Negotiable". He then delivers the cheque to Vusi Nxumalo and drives off in his New Car.

The cheque was stolen from Vusi's office and subsequently deposited with XYZ Bank Limited into an account opened under the name of Vusi Nxumalo. ABC Bank Limited paid out the cheque to XYZ Bank Limited, which in turn credited the account held by its customer. The funds were immediately withdrawn from the account.

Vusi Nxumalo, who denies any knowledge of the account held with XYZ Bank comes to you and seeks advice:

- (i) Whether he can successfully sue ABC Bank;
- (ii) Whether he can successfully sue XYZ Bank Limited; and
- (iii) What is his remedy under the circumstances, if any.

[TOTAL MARKS: 25]

QUESTION 2

The terms "value" and "valuable consideration" are used interchangeably in the Bills of Exchange Act 11/1902, and this can lead to confusion.

Discuss in detail how the terms have been defined and used in the Act, and whether you agree with the above statement.

[TOTAL MARKS: 25]

QUESTION 3

- (i) Inventing your own facts draft a petition for the sequestration of a debtor's estate in terms of section 8(b) of the Insolvency Act, 1955. [15]
- (ii) Outline the procedure you would follow up to the point where the court grants a final order for sequestration. [10]

[TOTAL: 25 MARKS]

QUESTION 4

When entering into a contract of insurance the proposed insured has a duty to disclose material facts and show the utmost good faith.

Critically discuss the above statement with reference to decided cases.

[TOTAL: 25 MARKS]

QUESTION 5

Define and briefly discuss the following:

- (i) Accommodation party; [5]
- (ii) Special Indorsement; [5]
- (iii) Reinsurance; and [10]
- (iv) Rehabilitation [5]

[TOTAL: 25 MARKS]