

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2013

- TITLE OF PAPER** : **MERCANTILE LAW**
- COURSE CODE** : **L 405**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- 1. QUESTION ONE (1) IS COMPULSORY.**
 - 2. ANSWER ANY OTHER THREE (3) QUESTIONS.**
 - 3. ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
 - 4. IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION, AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

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

QUESTION 1 (Compulsory)

Musa Dlamini purchased goods from ABC Warehouse for E200,000.00 (Two hundred thousand emalangen). He drew up a cheque in favour of the seller (ABC Warehouse) for the purchase price and posted it. The cheque was crossed and marked "not negotiable". The cheque was stolen and later deposited with Nedbank (Swaziland) Limited, Mbabane Branch, who collected payment on behalf of its customer, ANC Warehousing.

- (i) Who is the true owner of the lost cheque? [5]
- (ii) Can Musa Dlamini sue his bank? If so, on what basis? [5]
- (iii) Can Musa Dlamini sue Nedbank (Swaziland) Limited? If so, on what basis? [10]
- (iv) If Musa Dlamini cannot sue Nedbank (Swaziland) Limited what other remedy, if any, does he have? [5]

[TOTAL MARKS: 25]

QUESTION 2

- (1) Briefly distinguish between the object of insurance and the object of risk. [10]
- (2) Briefly discuss an insurer's right to subrogation. [15]

[TOTAL MARKS: 25]

QUESTION 3

- (i) In terms of section 8(b) of the Insolvency Act, 1955 failure to satisfy a judgment amounts to an act of insolvency. Briefly discuss the requirements of the above section. [15]
- (ii) A trustee of an insolvent estate may ask the court to set aside a disposition which prefers one creditor above another. Discuss what must be provided by a trustee in such actions. [10]

[TOTAL MARKS: 25]

QUESTION 4

Delivery plays a central role in the law of Bills of Exchange.

- (i) Discuss the role(s) of delivery under the Bills of Exchange Act, 1902. [10]
- (ii) What is the relationship between authority and delivery? [10]
- (iii) Under what circumstances may the defence of non-delivery be raised? [5]

[TOTAL MARKS: 25]

QUESTION 5

Briefly explain the following:

- (i) Signer of an Aval [5]
- (ii) Restrictive indorsement [5]
- (iii) Special Crossing [5]
- (iv) Double insurance [5]
- (v) Rehabilitation [5]

[TOTAL MARKS: 25]