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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2014

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)

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Vusi Dlamini, a businessman, operates a current account with his bank, ABC Bank Limited. On the 21st January, 2014 he received a cheque payment from one of his customers for an amount of E100 000.00. The following day he deposited the cheque with his bank. Immediately after depositing the cheque he approached the Bank Manager and requested to make a cash withdrawal of E20,000.00, as well as issue a cheque for E50,000.00 in favour of one of his creditors who was pressing him for payment. The Bank Manager acceded to the request.

Two days later, Vusi Dlamini received a call from his Bank Manager who informed him that the cheque for E100.000.00 had been dishonoured by the drawee Bank, XYZ Bank Limited. Consequently, Vusi Dlamini's account would be debited with E100 000.00, and the cheque for E50 000.00 issued by him had been dishonoured due to insufficient funds in the account. Vusi Dlamini comes to you seeking advice whether:

- (i) He can challenge the decision to reverse the credit; and [15]
- (ii) He can sue his bank for damages for injury to his reputation. [10]

[25 MARKS]

QUESTION 2

Discuss, with reference to decided cases, the considerations which the High Court will take into account in determining whether to issue an Order (Final) for the sequestration of the estate of an insolvent debtor.

[25 MARKS]

QUESTION 3

The notion of utmost good faith and the view that the insurance contract, or for that matter any other contract, may be a contract of the utmost good faith, was rejected in the case of **Mutual and Federal Insurance Co. LTD v. Oudtshoorn Municipality 1985 91) SA 419 (A)**.

Briefly discuss the court's reasoning in the case cited above, and the role played by good faith in the formation (and renewal) of insurance contracts. [25 MARKS]

QUESTION 4

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In certain circumstances, the issue of a bill, cheque or note, generates an obligation (the cambial obligation) which is quite distinct from the obligation pursuant to which the issue took place.

- (i) List and briefly discuss the requirements for the cambial obligation to arise. [15]
- (ii) What is the connection, if any, between the cambial obligation and the instrument (bill, cheque, or note) itself? [5]
- (iii) What conditions, if any, should be fulfilled for cambial obligation to be enforceable? [5]

[25 MARKS]

QUESTION 5

- (i) Briefly distinguish between “undue preference” and “voidable preference”. [10]
- (ii) Briefly discuss the legal relationship which arises where the same interest is insured against the same risk with two or more independent insurers. [15]

[25 MARKS]