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

**SUPPLEMENTARY EXAMINATION PAPER, JULY 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.**

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**QUESTION 1 (Compulsory)**

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During the course of 2013 ABC (Pty) Limited had on several occasions purchased goods from XYZ (Pty) Limited. In all these instances the purchases were concluded on behalf of ABC (Pty) Limited by Victor Tsela, a Sales Director. On each occasion payment was made by way of cheque, signed by Victor Tsela. In December, 2013 an order was received and processed in the usual manner. A post-dated cheque for E150,000.00 was received by the Managing Director, Job Vilane, on behalf of XYZ (Pty) Limited. The cheque was payable to "XYZ or order". Due to financial constraints the Managing Director negotiated the cheque to Moses Dlamini, who paid E135,000.00 for the instrument. Upon maturity of the instrument it was duly presented to the drawee bank. The cheque was dishonoured and returned marked "payment stopped".

It later turned out that Victor Tsela used the company's name to order the goods for his own purposes, hence the decision to stop payment of the cheque.

Discuss the liability, if any, of the various parties to the instrument. [25 MARKS]

**QUESTION 2**

"Where an individual is staring insolvency in the face, there is often a strong temptation to evade his creditors, to appropriate and hide his assets, or to give them away to friends or associates, so as to keep them out of the hands of his creditors".

Critically discuss the above statement and the ways in which the Insolvency Act, 1955 seeks to prevent or address such conduct. [25 MARKS]

**QUESTION 3**

"An insured who brings a claim under a contract of insurance bears the burden of proving that the risk as described in the insurance contract has materialized".

Critically discuss the above statement with reference to decided cases. [25 MARKS]

**QUESTION 4**

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A drawee bank may be held liable for failing to observe the terms of its customer's mandate. Briefly discuss:

- (i) The remedies available to a customer where the bank has failed to observe the terms of his mandate; and [10]
  - (ii) The nature and scope of protection afforded to banks by the Bills of Exchange Act, 1902 under these circumstances. [15]
- [25 MARKS]

**QUESTION 5**

Briefly explain the following:

- (i) Accommodation party [5]
- (ii) Subrogation [5]
- (iii) Rehabilitation [5]
- (iv) Restrictive indorsement [5]
- (v) Acceptance [5]

[25 MARKS]