

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

**MAIN EXAMINATION PAPER, MAY 2016**

- 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, a small time businessman who is struggling, operates a current account held with ABC Bank Limited. The account has an overdraft limit of E100 000.00 (one hundred thousand emalangeni).

In or around the 5<sup>th</sup> January, 2016 he received a cheque payment of E50,000.00 (fifty thousand emalangeni) from his customer Vusi Qwabe, for goods sold and delivered. He immediately deposited the cheque into his bank account, thereby reducing the amount of his overdraft to minus E28 000.00 (twenty eight thousand emalangeni).

At the time of depositing the cheque Musa Dlamini was battling with debt, and his liabilities exceeded his assets.

It also turns out that the account from which the cheque was drawn, held with Money Bank Limited, had been erroneously credited with an amount of E500,000.00 (five hundred thousand emalangeni) just a week before it was issued to Musa Dlamini. It has since been established that the E500,000.00 (five hundred thousand emalangeni) actually belongs to XYZ Limited.

On the 31<sup>st</sup> March, 2016 the High Court of Swaziland issued a final order for the sequestration of Musa Dlamini's estate.

- (a) The trustee of Musa Dlamini's estate enquires from you about the prospects of recovering the proceeds of the cheque payment of E50 000.00 from the bank in order to distribute the money among his creditors.

Advise him, setting out the rights of the bank, if any, to retain the proceeds of the cheque.

[10]

- (b) What is/are the remedy/remedies, if any, of XYZ Limited and Money Bank Limited.

[10]

- (c) If the trustee of Musa Dlamini's estate declines to institute legal proceedings to recover the E50 000.00, what are the rights, if any, of the creditors of his estate? [5]

[TOTAL MARKS: 25]

**QUESTION 2**

"A crossing is a material part of a cheque, and forms part of a bank's mandate and imposes on it a duty to deal with the cheque in the manner directed".

- (a) What is a crossing, and what is its effect on a cheque? [5]
- (b) What is the effect of a bank's failure to act, and when can a bank be exonerated from a failure to act, in accordance with a crossing? [10]
- (c) What are the rights of a true owner of a stolen or lost crossed cheque marked "not negotiable"? [10]

[TOTAL MARKS: 25]

### **QUESTION 3**

Delivery plays a central role in the Law of Negotiable Instruments.

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

[TOTAL MARKS: 25]

### **QUESTION 4**

"... the duty of good faith in relation to contracts of insurance relates to the rights of the insurer to receive correct and complete information about material facts relating to the risk in terms of the contract in question" (LAWSA Vol. 12 paragraph 172).

Based on the above statement –

- (a) Briefly discuss the rationale of the insurer's right. [5]
- (b) How is materiality assessed? Explain with reference to decided cases. [10]
- (c) Briefly explain the concept of risk in insurance law. [10]

[TOTAL MARKS: 25]

### **QUESTION 5**

Write short notes on the following:

- (a) A banker's duty of secrecy. [5]
- (b) Discharge of a bill of exchange. [5]
- (c) Reinsurance. [5]
- (d) Accommodation Party. [5]
- (e) Acceptance. [5]

[TOTAL MARKS: 25]