

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER, MAY 2017**

- 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.**

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QUESTION 1 (Compulsory)

Melusi Dlamini is a small time businessman who runs a spares shop under the style “Melusi Spares Shop”. He orders an unusually large consignment from his main supplier, MV Motor Spares (Pty) Ltd, to the tune of E500,000.00 to service an urgent order he has received from the Government of Swaziland.

However, he does not have enough cash in his bank account to cover the order that he has placed. He approaches his longtime friend, Amos Maseko, who is a well known business mogul, for assistance. Amos Maseko issues a post-dated cheque drawn on his company AM (Pty) Ltd for E500,000.00. The cheque is payable to “MV Spares or Order”. The cheque is delivered by Melusi Dlamini to his supplier, who then releases the consignment.

MV Motor Spares (Pty) Ltd are facing a cash flow problem, and the managing director, Enock Kunene, decides to ask Moses Motsa to take the cheque at a 10% discount, to which the latter agrees. He (Enock Kunene) then writes the name of his company at the back of the cheque and signs beneath it. In the meantime, that is, before the cheque matures, Melusi Dlamini discovers that a large part of the consignment is defective. On hearing this, Amos Maseko instructs his bank to “stop payment” of cheque. Unaware of these developments Moses Motsa deposits the cheque on due date, but it is dishonoured.

Discuss, with reference to case law, the liabilities, if any, of the parties (excluding the Bank on whom the cheque is drawn).

[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”.

With reference to case law, critically discuss the above statement and the ways in which the Insolvency Act, 1995 seeks to prevent or address such conduct, and protect creditors.

[25 MARKS]

QUESTION 3

In *Commercial Union Insurance of SA Ltd v Lotter 1999 (2) SA 147(SCA)*, the Court stated the following: “It is trite law that an insurer under a contract of indemnity insurance who has satisfied the claim of insured is placed in the insured’s position in respect of all right and remedies against other parties which are vested in the insured in relation to the subject matter of the insurance.”

Discuss the above statement with reference to the principle of subrogation in the law of insurance.

[25 MARKS]

QUESTION 4

Discuss the liability, if any, of a collecting bank to the true owner of a cheque with regard to payment to a non-holder.

[25 MARKS]

QUESTION 5

Briefly discuss the following:

- (i) Composite signature [5]
- (ii) Acceptance [5]
- (iii) Undue preference [5]
- (iv) Double insurance [5]
- (v) *Mutuum* [5]

[25 MARKS]