

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY, 2017

- TITLE OF PAPER** : **MERCANTILE LAW**
- COURSE CODE** : **L 405**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- 1. ALL CANDIDATES MUST ANSWER QUESTION 1 (COMPULSORY).**
 - 2. ANSWER ANY OTHER THREE (3) OF THE REMAINING 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)

Vusie Dlamini, a businessman, operates a current account with his bank, ABC Bank Limited. On the 21st January, 2017 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 to 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, Vusie 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, Vusie 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. Vusie Dlamini comes to you seeking advice whether:

- (i) he can challenge the decision to reverse the credit; and (15 Marks)
- (ii) he can sue his bank for damages for injury to his reputation (10 Marks)

[25 MARKS]

QUESTION 2

“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 case law.

[25 MARKS]

QUESTION 3

Signature is a concept of a fundamental importance in relation to the law of negotiable instruments.

- (i) Discuss the different and separate functions (or roles) which a signature may perform under the Bills of Exchange Act, 1902. [20]
- (ii) What is the relationship between Authority and Signature? [5]

[25 MARKS]

QUESTION 4

- (i) In terms of section 8(b) of the Insolvency Act, 1995 a failure to satisfy a judgment amounts to an act of insolvency. Briefly discuss the requirements of the above section in relation to compulsory sequestration.

[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 an action to set aside a disposition on this basis.

[10]

[25 MARKS]

QUESTION 5

Briefly discuss the following:

- (i) Insurer's right to salvage [5]
- (ii) Signature by procuration [5]
- (iii) Composition [5]
- (iv) Offer of arrangement [5]
- (v) Liability of authorized agent and rectification [5]

[25 MARKS]