

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY 2018

PAPER TITLE: MERCANTILE LAW

COURSE CODE: L405 (LLB PROGRAMME)

TIME ALLOWED: THREE (3) HOURS ONLY

INSTRUCTIONS:

- 1. ANSWER ANY FOUR QUESTIONS OF YOUR CHOICE. ALL QUESTIONS CARRY EQUAL MARKS.**

UNLESS PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR, DO NOT OPEN THIS PAPER.

Question 1

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

However, Mphathi does not have enough cash in his bank account to cover the order that he has placed. He approaches his long-time friend, Mncedisi Zwane, who is a well-known business mogul, for financial assistance. Mncedisi Zwane issues a post-dated cheque drawn on his company for the sum of E500 000.00. The cheque is payable to “Calisile Motor Spares (Pty) Ltd or to Order”. The cheque is delivered by Mphathi Mamba to his supplier who then releases the consignment.

Calisile Motor Spares (Pty) Ltd is facing a cash flow problem, and the Managing Director, Calisile Dlamini, decides to ask Gupta Chinama to take the cheque at a 10% discount, to which the latter agrees. She (Calisile Dlamini) then writes the name of her company “Calisile Motor Spares (Pty) Ltd” at the back of the cheque and signs beneath it.

In the meantime, that is before the cheque matures, Mphathi Mamba discovers that a large part of the consignment is defective. On hearing this from Mphathi Mamba, Mncedisi Zwane instructs his bank to “stop payment” of the cheque.

Unaware of these developments Gupta Chinama deposits the cheque on its 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

- a) Discuss the different and separate functions (or roles) which a signature may perform under the Bills of Exchange Act, 1902. (15)
- b) What is a composite signature? (5)
- c) What is the relationship between authority and signature under the law of negotiable instruments? (5)

[25 Marks]

Question 3

Give a legal opinion on each of the following factual situations:

- (a) Lindelwa Dlundu draws a cheque in favour of Denise Chisveto for the sum of E100, 000.00. Denise negotiates the cheque to Nokwanda Makhanya, currently aged 16 years. On her own accord, Nokwanda further negotiates the cheque to Sive Ngobe who then presents it for payment. The cheque is dishonoured. Sive Ngobe wants to sue on the instrument. (10)
- (b) Scandal Zuma, a famous sex worker in Mbhuleni receives payment by cheque from her loyal customer, Ronald Trump, in the sum of E1500.00. Scandal indorses the cheque in favour of her landlady, Nokwanda Masuku, as payment for her rental for the current month. The cheque is subsequently dishonoured. Advise Nokwanda Masuku. (10)

(c) Simpfiwe draws a bill and writes on it the following words; "Pay Mncedisi Zwane or bearer the sum of E50, 000.00." Mncedisi Zwane happens to owe Fisokuhle Mhlanga the sum of E65, 000.00. Being under pressure from the uncompromising Fisokuhle Mhlanga who desperately wants his money, Mncedisi Zwane delivers the cheque to Fisokuhle Mhlanga without signing it. The cheque is dishonoured and Fisokuhle wants to sue Mncedisi on the instrument. Advise. (5)

[25 Marks]

Question 4

Write notes on the following:

- a) *Concursus Creditorum* (5)
- b) Insurer's right to salvage (5)
- c) Indorsement (5)
- d) Signer of an aval (5)
- e) rehabilitation (5)

[25 Marks]

Question 5

"What risks a particular insurance contract covers is a matter of interpretation of the terms of that contract and cannot be determined in advance of its interpretation with reference to the type, name or label of the insurance contract involved" (per Reineke MFB et al. 'General Principles of Insurance Law')

What is your understanding of the above statement? Discuss with reference to decided cases. **[25 Marks]**

Question 6

Section 8(b) of the Insolvency Act, 1955 provides that:

“A debtor commits an act of insolvency –

(b) If a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appear from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment.”

Discuss the requirement(s) which must be satisfied before the Court can sequestrate the estate of a debtor in terms of this section **[25 Marks]**