

UNIVERSITY OF SWAZILAND
FACULTY OF COMMERCE
DEPARTMENT OF ACCOUNTING
LAW214 MAIN EXAM PAPER

Programme of Study	:	B. Comm. Level 2
Title of Paper	:	Commercial Law II
Course Code	:	LAW214
Time Allowed	:	3 Hours
Examiner	:	Dr. M.N. Shongwe
Total Marks	:	100

INSTRUCTIONS:

1. Answer ALL questions.
2. Begin each question on a new page.
3. Make sure that your expressions are clear and that you refer to relevant case law.

THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY INVIGILATOR(S).

QUESTION 1

With specific reference to the following cases:

- *Department of Trade & Industry v St Christopher Motorist Association Ltd* [1974] ALL ER 395;
- *Littlejohn v Norwich Union Fire Insurance Society* 1905 TH 374;
- *Philips v General Accident Insurance Co (SA) Ltd.* 1983 (4) SA 652 (W); and
- *Lynco Plant Hire & Sales CC v Univem Insurance Brokers CC* 2002 (5) SA 25 T,

write an essay in which you comprehensively analyse the essential elements of a contract of insurance.

[25 Marks]

QUESTION 2

In the case of *Woods v Martin's Bank Ltd.* [1958] 3 ALLER 66, Salmond J observed that the question "what is a bank?" may be answered differently from time to time and place to place. Do you agree with this sentiment? Critically discuss your position referring to statutory law and relevant case law.

[25 Marks]

QUESTION 3

With reference to the case of *Standard Bank v Sham Magazine Centre* 1979 (1) SA 484, discuss the various ways in which a drawer may render a bill completely and absolutely non-transferrable.

[25 MARKS]

QUESTION 4

PART A: WRITE THE CORRECT ANSWER ON YOUR ANSWER SCRIPT, NOT ON THE QUESTION PAPER.

1. A crossing of a cheque can be said to be 'special' when it consists of the addition of the banker's name but without the words "not negotiable."
 - A. True
 - B. False

[2 Marks]

2. There are three types of crossing cheques: a general crossing with the words "not negotiable"; a general crossing with the words "account payee only"; and a special crossing with or without the words "not negotiable."
 - A. True
 - B. False

[2 Marks]

3. A draws a cheque on FNB Matsapha for an amount of E10 000 in favour of B in settlement of a debt. B wishes to use the same cheque to pay C the same amount as the price for a quad bike he is to purchase from C. B therefore negotiates the cheque to C in terms of a signed indorsement. But he has not yet delivered the cheque to C. In this current situation C is:
 - A. A payee and holder for value.
 - B. A holder-in-due-course.
 - C. A cessionary without an indisputable title.
 - D. An indorsee.
 - E. An acceptor.
 - F. None of the above.

[2 Marks]

4. A bill of exchange is:
 - A. a document entitling the holder to the payment of a sum of money, and which is transferrable by delivery (if payable to bearer) or by endorsement (if payable to order) in such a manner that the transferee who takes the instrument in circumstances which render him 'a holder in due course' becomes indisputably entitled to payment.
 - B. a bill drawn on a banker payable on demand.
 - C. an unconditional promise in writing made by one person known as the "maker" to another, signed by the maker, and engaging to pay on demand or at the fixed or determinable future time, sum certain in money, to a specified person or to his order, or to bearer.

- D. an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer. [2 Marks]

PART B

SIMPLY ANSWER EITHER TRUE OR FALSE ON YOUR ANSWER SCRIPT:

5. In bills of exchange other than cheques, the drawer may become liable on the bill by a process called "Acceptance." [2 Marks]
6. According to Section 95 of the Bills of Exchange Act, for purposes of liability, the person concerned need not sign the negotiable instrument himself. It is sufficient if his signature is written on the instrument by any other person. [2 Marks]
7. Breach of a banker's contractual duty may, in accordance with the principles of the law of contract, entitle a trader to *damnum emergens*. [2 Marks]
8. The *quantum* of damages claimed by a trader as a consequence of wrongful dishonor of a cheque, whether it is dishonoured off-hand or payment is postponed, is the same because both acts are still classified as dishonor and do in fact damage the customer's credit. [2 Marks]
9. Section 59 of the Bills of Exchange Act protects a banker who has paid a forged order instrument in good faith and in the ordinary course of business from liability to the customer without exception. [2 Marks]
10. A qualified acceptance varies the effect of the bill as drawn. [2 Marks]
11. One of the legal issues in the case of *Standard Bank v Sham Magazine Centre* was whether a cheque made payable to order of a named payee, crossed generally and marked "account payee only" was thereby rendered not transferrable. [2 Marks]
12. "Law Merchant" is a term that refers to the merchants of ancient times who used to conduct international trade at fairs. [2 Marks]
13. Where a banker pays a cheque purportedly drawn by a customer, whose signature is in fact forged, the banker may legally debit the owner's account with the amount of the cheque. [1 Mark]

[TOTAL: 25 MARKS]

END OF EXAM