

**UNIVERSITY OF ESWATINI**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**EXAMINATION PAPER, JUNE 2019**

**(MAIN)**

**TITLE OF PAPER : MERCANTILE LAW II**  
**COURSE CODE : L405**  
**TIME ALLOWED : 3 HOURS**  
**MARK ALLOCATION : 100 MARKS**

**INSTRUCTIONS : ANSWER QUESTION ONE WHICH  
IS COMPULSORY, AND ANY  
THREE (3) QUESTIONS OF  
YOUR CHOICE**

**THIS EXAMINATION PAPER IS NOT TO BE OPENED UNTIL  
PERMISSION HAS BEEN GRANTED BY THE PROCTOR**

**Question One**

a) A cheque is made out to 'John Magagula or order.' It is not crossed and not marked 'not transferable'. There is no indorsement. Consider and explain the following (2 Marks each):

- a) Can the bank pay the cheque over the counter? If yes, to whom can it be paid over? If no, why not?
- b) If the teller asks the person presenting the cheque for payment to sign it on the reverse side, to whom can it be paid?
- c) What function is served by signature on the reverse side?
- d) What does it mean to be a 'holder in due course'?
- e) Explain the concept of negotiability.

**15 Marks**

b) Discuss the legal significance or effect of the legends in **each** of the three diagrams below.

**15 Marks**

<b>Bank of Uneswa</b>		Date: _____
Pay _____		or Bearer
the sum of _____		
_____		E 2,000,000.00
_____		

<b>Bank of Uneswa</b>		Date: _____
Pay _____		or Bearer
the sum of _____	<b>Not negotiable</b>	E 2,000,000.00
_____		

<b>Bank of Uniswa</b>		Date: _____
Pay _____		or Bearer
the sum of _____	<b>Not tranferable</b>	E 2,000,000.00
_____		

**Question Two**

Nathi owns a large Tuscan mansion in Coates Valley, Manzini. He has taken out an insurance policy against fire in respect of the house with "Matsapha All Purpose Outsurance Company." At the time he took out the insurance policy, the house was used as a dwelling house for himself and his family.

The previous policy expired and Nathi filled out a fresh proposal form for the renewal of the policy on 10 June 2019. In July of the same year, Nathi changed employers and moved to Sandton, South Africa. He gave over his house to his younger brother, Steven who desirous to make financial use of it, partitioned it internally and converted the spacious kitchen into a top-billing shebeen and operated a ladies 'escort agency.' In the proposal form,

there was included the following standard question: "To what use is the house to be put?" Nathi's written response was: "residential dwelling house." The Insurance company promptly renewed the policy.

On 15<sup>th</sup> November 2019, a rampant fire in the housing estate reached Nathji's house and totalled it. Nathi grateful for his prescience in taking out a fire insurance policy sought to claim for the loss suffered. However, on assessment after Nathi filed his claim for loss, the Matsapha Outsurance Company discovered that the house was in fact used as a 'brothel' by Nathi's brother and rejected his claim.

a) Critically discuss whether Nathi can be entitled to recover on the policy. **20 Marks**

b) With reference to any relevant matters or case of public interest, explain how public sentiment may be useful in influencing the insurer's rules and actions to accept or reject a policy claim.

**5 Marks**

**Total 25 Marks**

### **Question Three**

Write short informative notes on (5 Marks each):

- a) Pledge
- b) Subrogation
- c) Holder for value
- d) Excursion
- e) Rights and duties of a mortgagee

**Total 25 Marks**

### **Question Four**

- a) With the aid of the case of *Bank of England v Vagliano Bros* [1891] 187 HL, critically discuss how the courts in the law of negotiable instruments determine whether a particular payee is a "fictitious payee."

**15 Marks**

b) i) Explain the functions of the office of the Adjudicator under the Retirement Funds Act.

**7 Marks**

ii) Distinguish between debtor/creditor and enrichment lien.

**3 Marks**

**Total 25 Marks**

### **Question Five**

Eswatini has ushered in a new insurance and pensions regime for the country. Critically discuss what you consider to be the most salient features of this regime.

**Total 25 Marks**