

UNIVERSITY OF ESWATINI

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

EXAMINATION PAPER, JUNE 2019

(MAIN)

**TITLE OF PAPER : SECURED TRANSACTIONS
& SECURITIES LAW**

COURSE CODE : LAW 406

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

Brenda left her job as an electronics engineer at Siyavutsa Engineering to open her own electronics firm under the name Brenda's Corporation. Brenda's firm manufactured, sold and installed a new line of lightweight satellite dishes that could easily be mounted on almost any kind of structure and building. After a year of only marginally successful sales, Brenda ran into some unexpected difficulties. First, Siyavutsa Engineering brought suit against her for patent infringement. The litigation process was not only expensive, it was time consuming. Second, Brenda's main supplier, Tech Electronics had labour difficulties that stopped all shipments to Brenda for six (6) months. Unable to pay her personal debts or the debts of the business, Brenda turned to insolvency processes, seeking some sort of remedy.

She sought the services of Advocate Sputnik a renowned insolvency lawyer and trustee for counsel. Assume you are Advocate Sputnik, advise Brenda on:

- a) Whether Brenda could be forced into insolvency by her creditors.
- b) Whether Brenda's business could be forced to close down or she can make alternative arrangements under the law.
- c) Whether any of her property could be saved if she were forced into insolvency.

(Delineate your counsel appropriately)

Total 25 Marks

Question Two

Barry is a tow-truck driver who listens illegally on his truck radio to police discussing a motor vehicle collision. He rushes to a collision scene before an ambulance can get there, and tows a vehicle away to his storage yard. The driver, Vusi, is so distressed he signs the document put in front of him and does not read the fine print very carefully. Barry charges E2000 a day to store the vehicle in his storage yard, and refuses to release the car until payment is made by cash or bank guaranteed cheque. Barry laughs when

Vusi threatens to take him to court, because every day the storage is earning Barry E2 000.

Closely referring relevant authorities and principles in relation to secured transactions, advise Vusi in his predicament.

Total 25 Marks

Question Three

- a) List seven (7) acts of insolvency. **7 Marks**
- b) Discuss the three special defences available to a surety against a creditor. **10 Marks**
- c) Boyce is desirous of building a new home on a piece of property he has acquired from his services but does not have capital to build. He decides to approach a banking institution for a loan. The bank requires security for this loan. Provide the bank with legal guidance on the rights and duties of a mortgagee. **8 Marks**

Total 25 Marks

Question Four

Closely referring to statutory law, *critically* discuss an insolvent person may be rehabilitated.

Total 25 Marks

Question Five

Distinguish between the following (5 Marks each):

- a) Improvement and enrichment lien
- b) Lien and landlord's tacit hypothec
- c) Covering and collateral bond
- d) Cession and assignment
- e) Compulsory and voluntary sequestration

Total 25 Marks