



# UNIVERSITY OF ESWATINI

FIRST SEMESTER RE-SIT EXAMINATION PAPER, 2019/2020.

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW407

**TITLE OF PAPER: NEGOTIABLE INSTRUMENTS AND BANKING  
LAW**

**TIME ALLOWED: 3 HOURS**

**Instructions**

1. Answer all four questions.
2. Write legibly and refer to legal authority consistently.

**Special Requirements**

NONE

**Additional Material (s)**

NONE

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.*

*No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.*

**DO NOT turn examination paper over until instructed to do so.**

**QUESTION 1**

With the aid of the case of *ESOR Limited v First National Bank of Swaziland* 2008 SZHC 3, analyse the legal rules governing the liability of a banker for wrongful payment, and the dynamics of the available defences. [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? 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**

Daniel, who has never had any dealings with Phil, drew and signed a cheque in blank and handed it to his secretary Eric so that Eric might make a certain payment on Daniel's behalf. Eric fraudulently completed and delivered the cheque to Phil, his brother. The cheque was made payable to Phil or bearer. Upon presentation it at the drawee-bank, the cheque got dishonoured. Phil then sued Daniel, alleging *inter alia* that he (Phil) was a holder in due course. Daniel alleged that Phil was not a holder in due course because the cheque had been signed in blank and was not subsequently completed in accordance with the authority which Daniel had given to Eric. Was Phil a holder in due course in the circumstances? Could Phil succeed in an action to enforce payment of the cheque against Daniel? Discuss fully referring to case law. [25 Marks]

END OF EXAM