

**UNIVERSITY OF SWAZILAND
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2007**

TITLE OF PAPER	:	MERCANTILE LAW
COURSE CODE	:	L 405
TIME ALLOWED	:	THREE (3) HOURS
INSTRUCTIONS	:	ANSWER ANY FOUR (4) QUESTIONS. ALL QUESTIONS CARRY EQUAL MARKS.

**THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN
GRANTED BY THE INVIGILATOR.**

Question 1

With the aid of the case of *Bank of England v Vagliano Brothers* [1891] AC 107, and with specific reference to the relevant provisions of the Bills of Exchange Act, No. 11/1902 of Swaziland,

- (i) Explain who is a fictitious payee in the law of negotiable instruments. (15marks).**
- (ii) Explain the requirements that must be satisfied before a party to a bill qualifies as a holder in due course. (10 marks)**

[Not Bene. Although you are required to make specific reference to the Bills of Exchange Act, you will not suffer any penalties for not citing the specific sections in question.]

[Total marks 25]

Question 2

With the aid of relevant decided cases and with specific reference to the relevant provisions of the Bills of Exchange Act, No. 11/1902, where relevant, discuss the liability of Venture Bank Ltd. in the following cases:

(a) C, a legal practitioner in Manzini, maintains an active current account with Venture Bank Ltd. His confidential secretary, Sharon, who is entrusted with the safekeeping of his cheque books, steals one of the cheques. She draws the cheque on Venture Bank for E15, 000, payable to herself. She then expertly forges the signature of her boss, C, and presents it for payment at the Mbabane branch of the Venture Bank. The bank pays Sharon. the E15 000, and debits the account of C. (8 marks)

(b) Dr Buhle, a medical practitioner in Manzini, maintains an active current account with the Manzini branch of the Venture Bank. Paula, his confidential secretary, presents to him for signature a cheque drawn on the Venture Bank for E11 000, in favour of Vusi Vuma in payment for goods and services that Vusi Vuma has supposedly supplied to Dr. Buhle. Dr. Buhle signs the cheque. Paula negotiates the cheque to Vucina Cool, by forging the signature of Vusi Vuma. Vucina Cool

cashes the cheque at the Manzini branch of the Venture Bank. The bank debits Dr. Buhle's account with the amount.

(10marks)

(c) Ayanda Dlamini draws a cheque on Allied Bank Ltd. with which he has a current account, for E7,000, payable to Jan Simelane. The cheque is stolen by Don Davies who presents it to the Allied Bank for payment. The bank asks Don Davies to sign the cheque at the back, and he does this by forging the signature of Jan Simelane. The Allied Bank has debited the account of Ayanda Dlamini. (7marks)

[Total marks 25]

Question 3

With the aid of decided cases, discuss the importance of documentary letters of credit in the law of banking and international trade.

[25 marks]

Question 4

(a) What are the basic functions of a bank? (5 marks)

(b) List and briefly define any 5 qualities of money (7 marks)

(c) Define "money" (3 marks)

(d) With the aid of the case of *Energy Measurement (Pty) Ltd. v First National Bank of South Africa Ltd*, identify five compelling reasons for the imposition of a duty of care on a collecting banker when opening a new account for a prospective client. (10 marks)

[Total marks 25]

Question 5

(a) Students are taught at an early stage of their studies that it is incorrect to speak of 'all my money in the bank ...' (per Staughton J. in *Libyan Bank v Banker's Trust Co.* [1989] 3 All E.R. 252.)

With the aid of relevant decided cases, discuss the nature of the legal relationship between a banker and a customer in the light of this statement. (You are required to confine your discussion to the operation of the *current account*) (15 marks)

(b) With the aid of the leading case of *Transitional Local Council of Randfontein v Absa Bank Ltd. 2002 2 All SA 13 (W)*, distinguish between the contracts of *mutuum* and *depositum* in respect of deposits taken by banks.

(10 marks)

[Total marks 25]

Question 6

With the aid of relevant decided cases, explain the term “friendly sequestration” as used in the law of insolvency. How do the courts ensure that the legal machinery of sequestration is not abused by applicants acting in collusion with the debtor? [25 marks]

Question 7

(a) Define “general” and “special” crossing of cheques. (4 marks)

(b) Discuss the legal effect of,

(i) Crossing a cheque specially, (4 marks)

(ii) Crossing a cheque generally and adding the words “not negotiable”, (6 marks)

(iii) Crossing a cheque generally and adding the words “account payee only” (5 marks)

(c) Indicate 3 ways in which a negotiable instrument may be rendered payable to bearer. (6 marks)

[Total marks 25]

Question 8

On June 12, 1999, Andrew Gule agreed to sell his house in Manzini to Timothy Mthetwa for the sum of E500, 000. Under the agreement of the sale, title and possession were to pass to Mthetwa after he had tendered the entire purchase price. On July 12 1999, Mthetwa paid Gule E300, 000 and on August 21st of the same year, he paid the final instalment of E200,000. Meanwhile, on July 17th 1999, the house, which was comprehensively insured by the Better Life Insurance Co. Ltd, was damaged by fire and the Better Life Insurance Company paid Gule E400, 000 compensation for the damage.

When Gule received the E400, 000 in compensation, he proceeded to purchase a brand new Toyota Corona, which he promptly insured with the

Better Life Insurance Co. Ltd. On the 22nd of August 1999, Gule went out to celebrate the recent spell of good luck that he has been experiencing.

On his way home after the celebration, a beast belonging to his neighbour, Alex Mbatha, smashed the windscreen of his car, causing a damage amounting to E3, 000

He put in a claim for the damage to the car and Better Life Insurance Company settled the claim by fitting the car with a new windscreen. Gule then proceeded to sue Mbatha in delict for the damage done to his car. Mbatha contended that having already been compensated for the damage done to his car by the insurers, Gule had been fully compensated for the damage he had suffered.

The Better Life Insurance Co. Ltd which has come into possession of all the facts wishes to initiate legal proceedings against Gule and Mbatha

Advise Gule and Mbatha.

[20 marks]

Does Mthetwa have any claims against any of the parties? (5 marks)

[Total marks 25]