

UNIVERSITY OF SWAZILAND

DEPARTMENT OF LAW

SUPPLEMENTARY EXAMINATION PAPER, JULY 2018

PAPER TITLE: MERCANTILE LAW II

COURSE CODE: L405 (LLB PROGRAMME)

TIME ALLOWED: THREE (3) HOURS ONLY

INSTRUCTIONS:

- 1. ANSWER ANY FOUR QUESTIONS OF YOUR CHOICE. ALL QUESTIONS CARRY EQUAL MARKS.**

UNLESS PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR, DO NOT OPEN THIS PAPER.

Question 1

“In the Law of Negotiable instruments a holder in due course occupies a privileged position”

- a) Discuss the requirements for holding in due course. (10)
- b) Discuss the concepts of “absolute” and “personal” defences in relation to a holder in due course. (10)
- c) What are the duties of a holder in due course in relation to a dishonoured instrument? (2)
- d) What are the consequences of a failure to discharge these duties? (3)

[25 Marks]

Question 2

Discuss, giving examples where possible, the concept of insurable interest in the law of insurance.

[25 Marks]

Question 3

The notion that an insurance contract is one of utmost good faith (*uberrima fides*) was rejected in ***Mutual and Federal Insurance Co. Ltd v Oudshoorn Municipality 1985 (1) SA 419 (A)***.

Critically discuss the above judgment and state whether in effect (or in practice) it has brought about a change in the way the courts deal with the concept of good faith in insurance contracts.

[25 Marks]

Question 4

Write notes on the following:

- a) *Concursus Creditorum* (5)
- b) Subrogation (5)
- c) Composite signature (5)

- d) Undue preference (5)
- e) rehabilitation (5)

[25 Marks]

Question 5

- (a) John Forster receives a post-dated order cheque from one of his debtors. The cheque is drawn payable to 'Johan Vorster'. Explain whether John will qualify as the holder of the cheque and whether he can qualify as a holder in due course. (10)
- (b) Zakithi pays Yolanda by cheque for a gambling debt she previously owed to Yolanda. Yolanda indorses the cheque to Melissa to discharge her debt for typing lessons she received from Melissa. The cheque is dishonoured and Melissa wants to sue on it. Advise her. (10)
- (c) What is the effect of the marking on a cheque "not negotiable" and how does it differ (if at all) from one marked "not transferable"? (5)

[25 Marks]

Question 6

Mr Nsibande is a practising attorney who has a personal current account and savings account with Swazi Bank. As per the requirements of the Legal Practitioners Act 15 of 1964, Mr Nsibande also maintains a separate trust banking account with the same bank. It appears that Mr Nsibande's personal current account is substantially overdrawn but his attorney's trust account reflects a credit balance. Explain whether the bank can appropriate money from the trust banking account to pay the debt owed in respect of Mr Nsibande's personal account.

[25 Marks]