

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER 2008**

TITLE OF PAPER : MERCANTILE LAW
COURSE CODE : L405
TIME ALLOWED : THREE (3) HOURS
**INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS.
MARKS FOR EACH QUESTION RE
INDICATED IN BRACKETS.**

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

Question 1

John Smith drew a cheque for Fifty Emalangeni in favour of Godoba Motors for an oil filter. Being remiss however, he left a space between the printed words “pay” and the written words “Fifty Emalangeni.”

Max, a cashier at Godoba Motors, stole the cheque and altered the name of the payee to Godoba Motsa and inserted the words “One thousand and” before the words “Fifty Emalangeni”. He also altered the amount in figures accordingly. He then endorsed the cheque to Simon Dlamini as full and final settlement of outstanding legal fees for services rendered by the latter.

Simon received the cheque on his brother, Paul Maseko’s birthday and decided to endorse the cheque to him as a birthday gift. When Paul received the cheque, he noticed that the figure amount appeared to have been written in a different type of ink when compared with the ink used in writing the amount in words. He however, went ahead to cash the cheque at the Manzini branch of Swazi Bank, reasoning that his brother, who was a trained lawyer, would have noticed any defects if such existed. The Bank has debited Mr Smith’s account with E1050.00 (One Thousand and Fifty Emalangeni) and he has come to you for advice.

Advise him fully, detailing the legal positions of Max, Simon Maseko, Paul Maseko and the Swazi Bank.

(25 Marks)

Question 2

With the aid of statutory and case law, critically examine the concept of “value” under the law of Negotiable Instruments.

(25 Marks)

Question 3

- (a) With the aid of the case of *Bank of England v Vagliano Brothers*, explain how the courts determine in the Law of Negotiable Instruments, whether a particular payee is a “fictitious payee”. (10 Marks)
- (b) Discuss the legal effect of crossing a cheque generally and adding the words “not negotiable”. (10 Marks)
- (c) “To qualify as a holder-in-due-course, one must be a “holder”, but not all holders qualify to be holders in due course.” Discuss. (5 Marks)

Total (25 Marks)

Question 4

“The goal of the Law of Insolvency should be to protect and reconcile the interests of creditors and at the same time give a fresh start to the insolvent.”

(25 Marks)

Question 5

Gwebu owns a large house in Manzini. He has taken out an insurance policy against fire in respect of the house with Mbabane All Purpose Company Ltd. 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 has now expired and Gwebu filled out a fresh proposal form for the renewal of the policy on 10th May 2000. In July 2000, Gwebu’s family moved to Vuvulane and Gwebu gave the house to his sister for use as a brothel and marula bar. In the proposal form there was the following standard question: “To what use is the house to

be put?" Gwebu's answer was: "dwelling house." The Insurance Company promptly renewed the policy.

On the 15th November 2000, there was a fire which destroyed the house. Gwebu now sought to recover on the policy but the Insurance Company which had discovered that the house was in fact being used as a brothel, refused to pay.

Was Gwebu entitled to recover on the policy?

(25 Marks)

Question 6

Peter Samketi is a well known businessman in Manzini. He owns a number of farms and two motor dealerships located in the Sidwashini Industrial and Matsapha Industrial areas. In January 2006, he purchased 5 brand new Mercedes Benzes from Daimler Chrysler in Mbabane and wrote a cheque for E400,000 as payment. Additionally, he wrote a cheque for E10,000 favour of the University of Swaziland as sponsorship payment for an orphaned child under his care. The two cheques were drawn on the Manzini branch of the Progressive Bank.

The bank returned the cheques unpaid. Daimler Chrysler and the University of Swaziland have initiated legal proceedings against Peter Samketi. At the time of presentment of the two cheques, Samketi's account at the bank had a credit balance of E800,000.

Discuss the legal remedies available to Peter Samketi.

(25 Marks)

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