

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**SUPPLEMENTARY EXAMINATION PAPER, JULY 2011**

- TITLE OF PAPER** : **MERCANTILE LAW**
- COURSE CODE** : **L405**
- TIME ALLOWED** : **THREE (3) HOURS**
- INSTRUCTIONS** :
- (i) **ALL CANDIDATES MUST ANSWER QUESTION 1 (COMPULSORY)**
  - (ii) **ANSWER ANY OTHER THREE (3) OF THE REMAINING QUESTIONS.**
  - (iii) **ANSWER A TOTAL OF FOUR (4) QUESTIONS.**
  - (iv) **IN ANSWERING ANY QUESTION NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION, AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

**DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.**

**QUESTION 1**

Muzi Zondo has a current account with ABC Bank Limited. He draws out a cheque for E10,000 (Ten Thousand Emalangeni) payable to Musa Myeni or Order". He crosses the cheque and marks it "Account Payee". Musa Myeni loses the cheque, which somehow falls into the hands of Vusi Sibisi. The latter writes "Pay Vusi Sibisi" at the back of the cheque and signs "M. Myeni" beneath. He then deposits the cheque with his bank, XYZ Bank Limited. ABC Bank Limited pays the cheque and in turn XYZ Bank Limited credits the account of Vusi Sibisi, who immediately withdraws all the money standing to his credit.

Musa Myeni comes to you and seeks advice.

- (i) Whether he can successfully sue ABC Bank Limited and Musa Zondo;
- (ii) Whether he can successfully sue XYZ Bank Limited; and
- (iii) What is his remedy under the circumstances, if any.

Advise Musa Myeni.

**[TOTAL MARKS: 25]**

**QUESTION 2**

Section 28 of the Bills of Exchange Act, 1902 provides that "A holder in due course is a holder who has taken a Bill complete and regular on the face of it ...".

- (i) What conditions should be met for a person to qualify as a holder in due course?  
[15]
- (ii) What defences, if any, can be successfully raised against a holder in due course in an action to enforce the rights embodied in a Bill?  
[10]

**[TOTAL MARKS: 25]**

**QUESTION 3**

Section 8 (b) of the Insolvency Act, 1955 provides that:

A debtor commits an Act of Insolvency -

- (b) If a court has given judgement against him and he fails, upon the demand of the officer whose duty it is to execute that judgement, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has

not found sufficient disposable property to satisfy the judgement.

Discuss the requirement which must be satisfied before the court can sequester the estate of a debtor in terms of this section.

[TOTAL MARKS: 25]

**QUESTION 4**

Where an insured has an insurable interest, his right of recovery is limited to the nature and extent of that interest.

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

[TOTAL MARKS: 25]

**QUESTION 5**

Define and briefly explain the following:

- (i) Signer of an Aval; [5]
- (ii) Restrictive indorsement; [5]
- (iii) Subrogation; and [10]
- (iv) Composition. [5]

[TOTAL MARKS: 25]