



UNIVERSITY OF JOHANNESBURG

FACULTY OF LAW

AUCKLANDPARK CAMPUS

SUBMISSION OF FINAL EXAMINATION PAPERS

YEAR: NOVEMBER 2016

COURSE AND EXAMINATION PAPER: LAW OF NEGOTIABLE Instruments
and BANKING LAW
Lecturer: PROF. C. Hugo

EXAMINATION PERIOD:

1. How many of the following items will be required per student?

Examination script – 4 pages

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No Books.

Scanner sheet

–

/

Other

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2. Do you grant permission that copies of this examination paper may be given to the library for inclusion in the examination books that will be made available for reference purposes to lecturers and students at a later stage?

YES / NO

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Yes

3. How many students are still attending lectures (with a view to the number of examination papers required)?

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320

SIGNATURE OF LECTURER:

DATE:

FOR OFFICE USE:

Noted:

Date:

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Signature

Name (optional):..... Student number (compulsory):.....



UNIVERSITY
OF
JOHANNESBURG

**UNIVERSITY OF JOHANNESBURG KINGSWAY CAMPUS
FACULTY OF LAW**

PROGRAMME	:	LLB
MODULE	:	LAW OF NEGOTIABLE INSTRUMENTS AND BANKING LAW
MODULE CODE	:	WRG0021
DATE	:	25 NOVEMBER 2016
TIME	:	2 hours
MARKS	:	60
EXAMINATOR	:	PROF CF HUGO
EXTERNAL EXAMINATOR	:	PROF SAREL DU TOIT (NWU)
NUMBER OF PAGES	:	15 (this page excluded)

INSTRUCTIONS

- 1 Answer all the questions and do so on the paper itself. Additional sheets will be provided should it be necessary.
- 2 Students are to be provided with a copy of the Bills of Exchange Act which they are entitled to consult during the exam and should refer to where appropriate.
- 3 Refer where possible also to relevant case law.

Part one: multiple choice questions

Indicate in respect of each of the statements below whether they are correct (“v”), or incorrect (“x”). For example, in relation to question 1 below:

- (a) v A treasury bill ...
(b) x The person from whom ...

Question 1

In the case *Secfin Bank Ltd v Mercantile Bank Ltd* 1993 2 SA 34 (W) the following was established:

- (a) a treasury bill is not a negotiable instrument since it is neither a bill of exchange nor a promissory note as defined in the Bills of Exchange Act.
(b) the person from whom a treasury bill was stolen can claim return of the bill from the person who purchased it in good faith from the thief.

(2)

Question 2

In the case *Motani Lounge (Pty) Ltd v Standard Bank of SA Ltd* 1995 2 SA 498 (W) the court held that:

- (a) where in a documents-against-payment collection the collecting bank accepted a collection instruction from a remitting bank subject to the ICC’s *Uniform Rules for Collections*, the collecting bank thereby became contractually bound both as against the remitting bank and the seller, to collect payment from the buyer in accordance with the instruction and the rules.
(b) The aforementioned *Uniform Rules for Collections* were automatically applicable irrespective of the will of the parties.

(2)

Question 3

In the case *Minister of Bantu Education v Standard Bank of SA Ltd* 1966 1 SA 229 (N) the following was established:

- (a) that the thief of a cheque who opened a savings account at the Standard Bank, thereby became a “customer” of Standard Bank for the purposes of section 81(5) of the Bills of Exchange Act.
(b) that if a thief deposits a stolen cheque into his account at a collecting bank, and the bank allows the thief (its customer) to withdraw money against this cheque before the cheque has been paid by the drawee bank to the collecting bank, the collecting bank thereby gives a consideration for the cheque as contemplated in section 81(1) of the Bills of Exchange Act, and can be held liable in terms of section 81(1) by the true owner of the cheque.

(2)

Question 4

In the case *Stabilpave (Pty) Ltd v The South African Revenue Services* 2014 1 SA 350 (SCA) the court held

- (a) that the tax-payer (Stabilpave), by failing to provide its banking details to the SARS, thereby elected (agreed with SARS) that SARS could refund any moneys due to Stabilpave by posting a cheque to it;
- (b) that if a debtor posts a cheque to its creditor in the absence of an agreement that the debt could be paid by the posting of a cheque, the risk of the cheque being lost in the post and not reaching the creditor, is on the debtor.

(2)

Question 5

- (a) The case *Indac Electronics (Pty) Ltd v Volkskas Ltd* 1992 1 SA 783 (A) established finally that a collecting bank owed a legal duty to the true owner of a cheque when collecting it, to do so without negligence.
- (b) The principles underlying the aforementioned *Indac* case played an important role also in the case *Peterson NO v Absa Bank Ltd* (2011 5 SA 484 (GNP)) although the case was not concerned with the collection of cheques.

(2)

Total for part one: 10

Name (optional)..... Student number (compulsory)

Part two: bills of exchange and trade financing

Question 6

Look carefully at the bill of exchange depicted below, and answer the questions relating to it. You may accept that the bill is currently in the possession of the CDD Bank Ltd. You may also accept that there are no forged signatures on the bill or any fraudulent or dishonest conduct relating to it. All natural persons who have signed on behalf of companies were properly authorised to do so.

Front

1 October 2016

To: Hazyview Wine Estate (Pty) Ltd

Pay: The Glass Company Ltd or order
One Hundred Thousand US Dollars (\$100 000)
for value received ninety days after sight

J Sithole (Managing Director)
on behalf of The Glass Company Ltd

2 October 2016

Accepted, payable at the
counters of ABB Bank Ltd,
16 Flower Street, Cape Town,
South Africa

M du Toit
for Hazyview Wine Estate
(Pty) Ltd

Back

M Naidoo
for ABB Bank Ltd

Pay CDD Bank Ltd

J Sithole (Managing Director)
on behalf of The Glass Company Ltd (without recourse)

Name (optional)..... Student number (compulsory)

(a) Identify the following parties:

the drawer:

the drawee:

the indorser or indorsers:

the signer of an aval (if there is one):

the indorsee:

the acceptor:

the holder:

(4)

(b) Discuss briefly the nature and consequences of the first (top) signature on the back of the bill.

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Name (optional)..... Student number (compulsory)

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(3)

- (c) On the assumption that the contract underlying this bill of exchange is an international contract of sale in terms of which Hazyview Wine Estate (Pty) Ltd (in South Africa) purchased bottles from the Glass Company Ltd (in England) on a documents-against-acceptance basis, explain briefly how payment will be arranged. Your answer should identify the role of any banks involved, and should also explain any forfaiting transaction reflected on the bill of exchange.

[illegible]

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

6

Name (optional)..... Student number (compulsory)

Part three: credit transfers

Question 7

- (a) Indicate briefly the difference between a credit transfer and a debit transfer.

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(2)

- (b) Against the background of credit transfers write notes on what you regard as being the main contribution to banking law of the following two cases: (i) *Gilbey Distillers and Vintners (Pty) Ltd v Absa Bank Ltd* 2001 JDR 0411 (C); and (ii) *Nissan South Africa (Pty) Ltd v Marnitz NO* 2005 1 SA 441 (SCA).

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Name (optional)..... Student number (compulsory)

$$2 \times 4 = (8)$$

Total for part three: 10

Name (optional)..... Student number (compulsory)

Part four: cheques

Question 8

Consider the facts set out below and answer the questions pertaining to them with reference to relevant sections of the Bills of Exchange Act and case law.

A draws a generally crossed cheque (with no additions to the crossing) in favour of B or order on the X Bank and delivers it to B in payment of a debt owed by A to B. B loses the cheque. C picks it up, forges the blank indorsement of B and delivers it to D (a second hand goods shop) in exchange for a tool set. D deposits the cheque into its bank account at the Y Bank. The Y Bank collects payment from the X Bank.

(a) Is X Bank entitled to debit the account of A with the amount of the cheque?

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(2)

(b) Has the debt owed by A to B been settled?

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(1)

Name (optional)..... Student number (compulsory)

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(3)

Question 10

The provincial government of the X province has concluded a building contract with A for the building of a municipal swimming pool. Z Bank has issued a standard-form JBCC performance guarantee in favour of the X province in terms of which it undertakes to pay the X province R1 million on receipt of a written demand by the X province alleging that the construction contract was cancelled due to A's default, annexing the notice of cancellation and calling up the guarantee. The Z Bank subsequently receives a written demand containing the required allegations but without any notice of cancellation being annexed. The notice of cancellation is delivered one week later, after expiry of the guarantee. Moreover, A has informed the Z Bank that it was in no way in default under the construction contract. Advise the Z Bank on its prospects of success in resisting payment of the guarantee on the basis of: (i) the initial absence and subsequent late delivery of the notice of cancellation; and (ii) the defence that A was not in default.

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Name (optional)..... Student number (compulsory)

[illegible]

Name (optional)..... Student number (compulsory)

(7)

Total of part five: 10

Total of paper: 60

Additional space for answering any question