



RHODES UNIVERSITY
Where leaders learn

Commercial Law 202 Paper 1: Forms of Payment Course Outline 2011

Compiled in part by S Ramlall, Rhodes University (2009) and A Mapanda, Rhodes University (2010)

Adapted and Edited by FR Di Palma, Rhodes University (2011)

Email Address: f.dipalma@ru.ac.za

Office: Adjacent to Attic (S2) – Top of right-hand staircase (next to library)

PURPOSE STATEMENT

The core component of this course is the law of negotiable instruments, specifically bills of exchange, promissory notes and cheques. The relationship between a bank and its customer within the law of cheques will also be discussed. The course will then look at issues surrounding the Financial Intelligence Centre Act (FICA), particularly measures aimed at the detection and prevention of money laundering. If time permits, there will be a brief overview of the Prevention of Organised Crime Act (POCA) and the various obligations which that Act imposes on professionals and business people.

ASSUMPTION OF PRIOR LEARNING

The following assumptions of prior learning are made:

- the ability to communicate effectively in both spoken and written English;
- the ability to learn independently;
- the ability to apply problem-solving techniques to practical situations.

OUTCOMES

CRITICAL OUTCOMES

The course intends to develop in students the skills set out below which are essential to the study and practice of law:

- problem identification and solving;
- successful completion of given tasks without supervision ;
- collection, analysis and evaluation of legal information;
- effective communication in both spoken and written word;

SPECIFIC OUTCOMES

Following the successful completion of this course, the students should be able to:

- demonstrate knowledge of the principles of negotiable instruments in South Africa;
- differentiate between various negotiable instruments and their essential elements;
- demonstrate knowledge of the rights, duties, obligations and liabilities of parties to negotiable instruments;
- assess and recognise the risk of fraud in financial transactions;
- understand the threat which money laundering activities pose to the world economy;
- recognise and describe basic money laundering techniques;
- understand and apply the principal measures aimed at the detection and prevention of money laundering and other activities of organised crime;
- understand the legal obligations of professionals and business people to combat money laundering and organised criminal activities, and be aware of the penalties for failure to comply.

ASSESSMENT STRATEGY

There will be two lectures for the Forms of Payment module each week in the fourth term only (Mondays 3rd Period, and Fridays 2nd Period).

The class work component of the whole course amounts to 30% of the final mark and comprises of two tests. This Forms of Payment module will only be tested in the second test on **Monday 24 October 2011** at **7pm** in the **Great Hall**.

IT IS A DP REQUIREMENT FOR STUDENTS TO WRITE THE TESTS AND YOU WILL ONLY BE EXCUSED IF YOU HAVE A VALID LEAVE OF ABSENCE.

The test and examination will contain:

- Multiple choice questions;
- Problem questions which require the application of statute, common law and case law to solve practical issues;
- Case notes; and/or
- Theory type questions, in which students are required to describe, explain and critically evaluate the current law.

NB: Pre-reading ahead of lectures is recommended so as to facilitate better understanding of concepts.

READING MATERIAL

There is no prescribed textbook for this course. Students will be referred in lectures to academic articles, reported cases, statues, and relevant sections of various textbooks, notably but not exclusively those listed below, all of which are available in the Alistair Kerr Law Library.

- Gibson, J.T.R. 2003. *South African Mercantile and Company Law*. 8th Ed. Juta & Co: Cape Town.
- Malan, F.R. & Pretorius, J.T. 2002. *Malan on Bills of Exchange, Cheques and Promissory Notes*. 4th Ed. Butterworths: Durban.
- Nagel, C.J. et al. 2007. *Commercial Law*. 3rd Ed. Butterworths: Durban

Statutes

- **Bills of Exchange Act 34 of 1964 (available in Malan *et al*);**
- The Banks Act 94 of 1990;

- **The Financial Intelligence Centre Act 38 of 2001;**
- The Prevention of Organised Crime Act 121 of 1998.

HOW TO ACCESS THE NOTES AND LECTURE SLIDES

Click on **Start**; click on **Run**; type in <\\jackal\user\home\dept\lawr> and open the folder for 2011; then open the folder called **Forms of Payment – Col 202 Paper 1.**

COURSE CONTENT

Topic 1: Origin and Sources

Introduction

The Origin of Negotiable Instruments

Sources of the South African Law of Negotiable Instruments

Topic 2: Basic Concepts, Definitions and Parties

Definition of Cheques, Bills of Exchange and Promissory Notes

The function of bills, cheques and promissory notes

What is a bill of exchange?

What is a cheque?

What is a promissory note?

Characteristics of Negotiable Instruments

Instruments Payable to Order or to Bearer

Parties to Negotiable Instruments

The parties to a bill of exchange and a cheque

The parties to a promissory note

Other parties to a negotiable instrument

Cambial agreement/obligation

Topic 3: Formal Requirements

The Essential Elements of a Negotiable Instrument

An order

Unconditional

Writing

A sum certain in money

Drawee must be named

Drawer's signature

Date of payment

Payee must be indicated

Topic 4: Elements of liability

Liability of the drawer / maker / debtor

Capacity

Issue

Delivery

Negotiation

Indorsement

Signature

Causa

Topic 5: Liabilities of the Parties

Drawer

Acceptor

Indorser

Signer of an aval

Transferor by delivery

Topic 6: Types of holders

Holder

The duties of a holder

Holder in due course

Holder for value

Successor of a holder in due course

Topic 7: Cheques

Bank-customer Relationship

Cheque Collection Process

The Crossing of Cheques

Protection of Certain Parties in case of Payment to Unlawful Possessors

Liability of the Collecting Bank

Topic 8: Discharge of a bill

Payment in due course

Acceptor becoming holder at maturity

Express waiver

Cancellation

Topic 9: Electronic Payment Mechanisms

Nature and Types of Electronic Payment Systems

The Need for Electronic Payment Systems

Topic 10: The Financial Intelligence Centre Act (“FICA”)

Background and Introduction

The Scope and Nature of Money Laundering

Rules and Regulations

Accountable Institutions, Offences and Penalties

Identification and Verification in Business and Professional Relationships

Topic 11: The Prevention of Organised Crime Act (“POCA”)

Background and Introduction

Definition of Organised Crime

Offences and Penalties

Specific Outcomes: On completion of this course the student should:	Assessment Criteria (What evidence must the student provide to show that they are competent?)	Assessment Tasks (The evidence will be gathered in:)
Know and understand the function, sources and legal principles of negotiable instruments	- demonstrate an appreciation of the content and nature of negotiable instruments - apply statutory and common law principles	- class discussion & exercises (formative) - tests & examination (summative)
Be able to identify and distinguish between essential elements of each negotiable instrument	- describe and explain the various negotiable instruments	- class discussions & exercises (formative) - tests & examination

	- demonstrate understanding of the interlink between various negotiable instruments	(summative)
Evaluate and appreciate the attendant risk of fraud	- compare the negotiable in terms of commercial usage, requirements and limitations	- class discussions & exercises (formative) - tests & examination (summative)
Know the rights and duties of parties to the various negotiable instruments	- be able to apply legal principles of negotiable instruments to different situations	- class discussion & exercises (formative) - tests & examination (summative)
Know the rights and duties of the public, professionals and businesspeople under FICA, and the penalties for non-compliance	-be able to identify and apply the law on the detection and prevention of money laundering to practical situations	- class discussions & exercises (formative) - tests & examination (summative)
Know the rights and duties of the public, professionals and businesspeople under POCA, and the penalties for non-compliance	-be able to identify and apply the law on the detection and prevention of organised criminal activities to practical situations	- class discussion & exercises (formative) - tests & examination (summative)