

**IMPORTANT INFORMATION! READ THIS TUTORIAL LETTER FIRST!  
PRESCRIBED MATERIAL! COMPULSORY ASSIGNMENT! SEMESTER  
MODULE! START IN TIME!!**

**DEPARTMENT OF MERCANTILE LAW**

**LAW OF NEGOTIABLE INSTRUMENTS, INTELLECTUAL  
PROPERTY & COMPETITION**

**(MRL4801)**

**Tutorial Letter 101/3/2010**

**Contents**

- 1 A word of welcome**
- 2 Purpose and outcomes of this module**
- 3 Communication with your lecturers and the University's administration**
- 4 Student support system**
- 5 Study material**
- 6 How the assignment system works**
- 7 How the examination system works**
- 8 Assignments**

**1****A WORD OF WELCOME**

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

You will receive a number of tutorial letters during the year. A tutorial letter is our way of communicating with you about teaching, learning and assessment.

This tutorial letter contains important information **about the scheme of work, resources and assignments for this module**. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

Please read Tutorial Letter 301 in combination with Tutorial Letter 101 as it gives you an idea of generally important information when studying at a distance and within a particular College.

In Tutorial Letter 101, you will find the assignments as well as instructions on the preparation and submission of the assignments. This tutorial letter also provides all the information you need with regard to the prescribed study material and other resources and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

**2****PURPOSE AND OUTCOMES OF THIS MODULE**

You are expected to study the information in the study guide by referring to the study objectives. After you have completed this module, you are required to have a thorough understanding of the basic principles of the law relating to negotiable instruments, other methods of payment, intellectual property and competition.

<b>3</b>	<b>COMMUNICATION WITH YOUR LECTURERS AND THE UNIVERSITY'S ADMINISTRATION</b>
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### 3.1 Communication with your lecturers

The lecturers responsible for this module are as follows:

#### Negotiable instruments and other methods of payment:

**Mr MP Makakaba (module co-ordinator)**

Building and office number: Cas van Vuuren Building 6-70  
E-mail address: [makakmp@unisa.ac.za](mailto:makakmp@unisa.ac.za)  
Telephone: (012) 429-8567

**Prof EA Fredericks**

Building and office number: Cas van Vuuren Building 6-71  
E-mail address: [fredeea@unisa.ac.za](mailto:fredeea@unisa.ac.za)  
Telephone number: (012) 429-8446

**Prof M Kelly-Louw**

Building and office number: Cas van Vuuren Building 6-99  
E-mail address: [kellym@unisa.ac.za](mailto:kellym@unisa.ac.za)  
Telephone number: (012) 429-8477

**Ms AI Leonard**

Building and office number: Cas van Vuuren Building 6-69  
E-mail address: [leonaai@unisa.ac.za](mailto:leonaai@unisa.ac.za)  
Telephone number: (012) 429-8473

#### Intellectual property and competition:

**Dr S Geyer**

Building and office number: Cas van Vuuren Building 6-150  
E-mail address: [geyers@unisa.ac.za](mailto:geyers@unisa.ac.za)  
Telephone number: (012) 429-2753

**Mr E Hurter**

Building and office number: Cas van Vuuren Building 6-136  
E-mail address: [hurtee1@unisa.ac.za](mailto:hurtee1@unisa.ac.za)  
Telephone number: (012) 429-8487

**Prof B Rutherford**

Building and office number: Cas van Vuuren Building 6-148  
E-mail address: [ruthebr@unisa.ac.za](mailto:ruthebr@unisa.ac.za)  
Telephone number: (012) 429-8448

All queries that are not of a purely administrative nature **but are about the content of this module** should be directed to us. Please have your study material with you when you contact us.

E-mail and telephone numbers are included above but you may also want to write to us. Letters should be sent to:

The Module Co-ordinator (MRL4801)  
 Department of Mercantile Law  
 PO Box 392  
 UNISA  
 0003

**PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.**

### 3.2 Communication with the University

If you need to contact the University about matters not related to the content of this module, please consult the publication *Your Service Guide @ Unisa* that you received with your study material. This brochure contains information on how to contact the University (e.g. to whom you can write for different queries, important telephone and fax numbers, addresses and details of the times certain facilities are open).

**Please note that all administrative enquiries should be directed to the Unisa Contact Centre. Enquiries will then be channeled to the correct department. The details are as follows:**

- |                                     |  |
|-------------------------------------|--|
| • <b>Calls (RSA only)</b>           | <b>0861 670 411</b>  |
| • <b>International Calls</b>        | <b>+27 11 670 9000</b>   |
| • <b>Fax number (RSA)</b>           | <b>012 429 4150</b>  |
| • <b>Fax number (international)</b> | <b>+27 12 429 4150</b>   |
| • <b>E-mail</b>                     | <a href="mailto:study-info@unisa.ac.za">study-info@unisa.ac.za</a> |
| • <b>Online address:</b>            | <a href="http://my.unisa.ac.za">http://my.unisa.ac.za</a>          |

Always have your student number at hand when you contact the University.

**Physical address:**

University of South Africa  
 Preller Street  
 Muckleneuk  
 Pretoria  
 City of Tshwane

**Postal Address:**

University of South Africa  
 P O Box 392  
 Unisa  
 0003

For information on the various student support systems and services available at Unisa (e.g. student counselling, tutorial classes, language support), please consult the publication *Your Service Guide @ Unisa* that you received with your study material.

#### 4.1 Contact with fellow students

##### 4.1.1 Study groups

**It is advisable to have contact with fellow students. One way to do this is to form study groups.** The addresses of students in your area may be obtained from the following department:

**Directorate: Student Administration and Registration**  
PO Box 392  
UNISA  
0003

**Please contact the Unisa Contact Centre 0861 670 411 for additional information.**

##### 4.1.2 myUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The *myUnisa* learning management system is Unisa's online campus that will help you to communicate with your lecturers, with other students and with the administrative departments of Unisa – all through the computer and the internet.

To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the “Login to *myUnisa*” link on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *Your Service Guide @ Unisa* which you received with your study material for more information on *myUnisa*.

#### 4.2 Discussion classes

Please ensure that you attend one of the group discussion classes which will be presented in both the first and the second semesters of this year (the time, date and venue of each will be confirmed in Tutorial Letter 103 which will follow in due course). This is one of the few opportunities where you can address your questions to one of the lecturers responsible for this course.

Each discussion class will focus on the law of negotiable instruments only because it is the most challenging section of the module. You will derive the most benefit from the discussion class if you have read through the section on negotiable instruments and have identified problem areas. We suggest that you participate in the discussion class so that you will leave with a better understanding of the work. Regard this class as an opportunity to assess what you know (and do not know). This will provide an indication of how much time and effort you still need to devote to this section of the module.

### 4.3 Satellite delivery

We will be hosting a number of satellite broadcasts in each semester. The details of these broadcasts will be communicated to you in Tutorial Letter 103 which will follow in due course.

The discussions in these broadcasts will focus on the law of negotiable instruments, copyright, trade marks and private competition. Some of the broadcasts are “live” whereas others are pre-recorded broadcasts. You will be able to participate in the live broadcast during its transmission, so your presence at the various venues will be an advantage.

Please consult the *myUnisa* website or phone 012 484 1117 for information about the broadcast classroom closest to you.

You are also able to purchase the DVDs from Unisa Press (when available). The order form, as well as Unisa Press’ contact details is available on *myUnisa*.

### 4.4 SMS

Please ensure that you have provided the University with your correct cellphone number(s) because important information such as reminders about discussion classes or satellite broadcasts are SMSed to students.

5

## STUDY MATERIAL

### 5.1 Inventory Letter

At the time of registration, you will receive an inventory letter that will tell you what you have received in your study package and also show items that are still outstanding. Also see the brochure entitled *Your Service Guide @ Unisa*.

Check the study material that you have received against the inventory letter. You should have received all the items listed in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

**PLEASE NOTE:** Your lecturers cannot help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par. 3 above).

### 5.2 Study material

The Department of Despatch should supply you with the following study material for this module:

- One study guide
- Tutorial Letters 101 and 301 at registration (and others later).
- One reader

### 5.2.1 A study guide

There is one study guide for this module

### 5.2.2 Tutorial letters

Apart from Tutorial Letters 101 and 103, you will also receive other tutorial letters during the year. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to you as soon as they are available or needed (for instance, for feedback on assignments).

If you have access to the Internet, you can view the study guides and tutorial letters for the modules for which you are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>

Apart from tutorial letter 101, the tutorial letters which you will receive are the following:

- Tutorial letter 102 (which contains extracts from the Bills of Exchange Act 34 of 1964).
- Tutorial letter 103 (which contains information about the discussion classes and satellite broadcasts).
- Tutorial letter 201 (which contains the commentary to the assignments).

### 5.2.3 Reader

**A reader entitled "PRESCRIBED CASES: CASE LAW FOR MRL4801" contains the six prescribed cases listed below.**

### 5.3 Prescribed textbook

There is **no prescribed textbook** for MRL4801. **You only need to study the study guide and your prescribed cases.**

### 5.4 Recommended books

There are no recommended books for this module.

### 5.5 Prescribed cases

It is **compulsory** for you to study the cases listed below. You must study them in conjunction with the information contained in the study guide. This will help you to gain greater insight into the relevant principles and their application.

We appreciate that it is impossible to study all the cases cited in the study guide in the limited time at your disposal. We have selected the most important decisions. Some of the cases included in the list below are leading ones; others may contain an informative discussion, a succinct statement of principles, or a set of facts which neatly illustrates such principles. We merely offer you a small selection, however, and you would be well advised to read as many additional cases as possible, not only for the reasons set out above, but also to become adept at swiftly reading through and appraising a case, something which will be of inestimable value to you in practice later on.

You should also bear in mind that the cases discussed in your study guide which do not appear in the list below are also important and should not be ignored. They must be studied in the way in which they appear in the study guide.

For the purposes of this module you need to study the following **six** prescribed cases (the total number of pages of each item is printed in square brackets after the citation):

**(a) Negotiable Instruments**

*Indac Electronics (Pty) Ltd v Volkskas Bank Ltd* 1992 1 SA 783 (A) [19]

*Standard Bank of SA Ltd v Sham Magazine Centre* 1977 1 SA 484 (AD) [22]

*Columbus Joint Venture v ABSA Bank Ltd* 2002 (1) SA 90 (SCA) [13]

**(b) Intellectual Property and Competition Law**

*Schultz v Butt* 1986 3 SA 667 (A) [25]

*Blue Lion Manufacturing (Pty) Ltd v National Brands Ltd* 2001 (3) SA 884 (SCA) [5]

*National Brands Ltd v Blue Lion Manufacturing (Pty) Ltd* 2001 (3) SA 563 (SCA) [4]

**How to download the prescribed cases from the internet:**

1. Go to [www.unisa.ac.za](http://www.unisa.ac.za)
2. Click on the link to the **library**
3. On the library's website, click on the link "**library catalogue**" (it is found under the "find information" tab next to the picture of the library).
4. Click on "**library course material**" (the 6th tab on the left hand side under "search options")
5. **Type in MRL4801** and **press "search"**
6. The 6 prescribed cases will appear for you to either view or print.
7. **Select the case** that you want to view/print, **insert student number and password**.

Also note that the prescribed cases are also available in the Reader entitled "**PRESCRIBED CASES: CASE LAW FOR MRL4801**" (see additional information above).

**5.6 Legislation**

You are required to study certain sections of the Bills of Exchange Act 34 of 1964. We will provide you with extracts from the Act in Tutorial Letter 102.



### 6.1 Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignment, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

In some cases, additional assessment might be available on the *myUnisa* site for your module. For students attending tutorial sessions, tutors may also set additional tasks and give feedback in class.

### 6.2 General remarks

**PLEASE NOTE:** Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par. 3 above).

**You might also find information on *myUnisa*. To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the 'login to *myUnisa*' link under the *myUnisa* heading on the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.**

Assignments should be addressed to:

The Registrar  
PO Box 392  
UNISA  
0003

You may submit written assignments and assignments done on mark-reading sheets either by post or electronically via *myUnisa*. **Assignments may not be submitted by fax or e-mail.** For detailed information and requirements as far as assignments are concerned, see the publication *Your Service Guide @ Unisa* which you received with your study material.

To submit an assignment **via myUnisa**

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

### 6.3 Commentaries and feedback on assignments

You will receive the correct answers automatically for multiple-choice questions. For written assignments, markers will comment constructively on your work. The commentary on the compulsory and self-evaluation assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignment. The tutorial letter number will be 201,

As soon as you have received the commentary to both the compulsory and the voluntary assignments, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination. Feedback on *myUnisa* additional assessments will be automated and therefore immediate. Additional work set by tutors will be discussed in class.

### 6.4 Submission date

The closing dates for the submission of the assignments are:

#### Semester 1

**Assignment 01** must be submitted on/before **3 March 2010**. This is a multiple-choice assignment that must be completed on the mark reading sheet provided. **Remember to add the correct unique number, namely 212999.**

**Assignment 02** must be submitted on/before **24 March 2010**. This is a written assignment. **It does not have a unique number.**

#### Semester 2

**Assignment 01** must be submitted on/before **2 August 2010**. This is a multiple-choice assignment that must be completed on the mark reading sheet provided. **Remember to add the correct unique number, namely 254269.**

**Assignment 02** must be submitted on/before **27 August 2010**. This is a written assignment. **It does not have a unique number.**

## 6.5 Calculation of the year mark

Please note that your year mark will be calculated by taking an **average** of the marks that you received for assignments 01 and 02.

For example, if you received 60% for assignment 01 and 70 % for assignment 02, your year mark will be 65% (that is,  $(60+70)/2$ ).

If you do not submit assignment 02 by the due date, you will be awarded 0% as a mark for assignment 02.

For example, if you received 60% for assignment 01 and 0 % for assignment 02, your year mark will be 30% (that is,  $(60+0)/2$ ).

## 6.6 Assessment of assignments

**PLEASE NOTE:** Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly references. It is unacceptable for students to submit identical assignments on the basis that they worked together. This is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

## 7

## HOW THE EXAMINATION SYSTEM WORKS

For general information and requirements as far as assignments are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

### 7.1 Examination admission

You must submit assignment 01 (for the semester in which you are registered) on or before the due dates indicated in order to gain admission to the examination.

### 7.2 How will this work in practice?

**Students who fail to submit assignment 01 (on or before the due dates indicated) will not be allowed to write the examination.**

Please note that a passing mark for assignment 01 is not required in order to gain admission to the examination. Students who have submitted assignment 01 but who failed may still write the examination at the end of the year.

### 7.3 Calculation of your final mark

Your year mark, based on the mark obtained for assignments 01 and 02, contributes 20% toward your final mark, while your examination mark contributes 80%.

The combined weighted average of your year mark and examination mark must be 50% or higher for you to pass the module/subject.

### 7.4 Examination period

This module is a semester module. This means that if you are registered for the **first semester** you will write the examination in **May/June 2010** and the supplementary examination will be written in October/November 2010. If you are registered for the **second semester** you will write the examination in **October/November 2010** and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

### 7.5 Examination paper

At the end of the semester for which you are registered, you will write **one two-hour** examination on this module. The examination paper has a total of **100 marks**. Please note that there are no multiple-choice questions in the examination paper.

The allocation of marks in the examination paper will be as follows:

- the law of negotiable instruments and other methods of payment will account for 60% of the examination paper
- the law of copyright - 20%
- the law of trademarks and private competition law - 10% **each**.

All the questions in the examination paper are compulsory.

### 7.6 Previous examination papers

The voluntary assignments (assignments 03) for the first and second semesters contained in this tutorial letter are, in actual fact, two previous examination papers. No other examination papers will be made available to you. We advise students, however, not to just focus on old examination papers as the content of modules and, therefore, examination papers change from year to year. You may, however, accept that the type of questions that will be asked in the examination will be similar to the questions asked in the activities in your study guide and in the assignments.

## 7.7 General information about the examination

You will not be receiving any further tutorial letters about the examination. However, these general guidelines should assist you in your preparation for the examination.

### Preparing for the examination

- Draw up a timetable indicating how you are going to master the work.
- Study regularly and make sure that you are able to do the activities in the study guide and understand the feedback. If you have any queries, please feel free to contact us.
- Read through the content of this module as many times as possible in preparation for the examination.
- Approach assignments as you would an examination - read through the content of the work and try answering the assignments (without consulting the study material). If you are unsure of an answer to a question consult the study material and read through it again.
- Contact your lecturers in good time if you are in doubt about the content of the work or the feedback given in relation to the activities.
- Plan the time you need to prepare for the examination: you will NOT be able to successfully master this course over a weekend.

### During the examination:

- Read the questions carefully and answer only that which is asked of you. Plan your answer before writing it down.
- Generally you will need to write down ten facts if a question counts ten marks.
- Try answering the questions point by point and make use of shorter sentences.
- Write legible and NEATLY.
- Note the division of marks and use the available time accordingly.

Finally, remember that we are here to help you. Do not hesitate to consult us at any stage.

We hope that you enjoy this course and we wish you success with your studies.

**THE LECTURERS  
UNISA**

## ASSIGNMENTS FOR THE FIRST SEMESTER OF 2010

**ASSIGNMENT 01 (FIRST SEMESTER 2010)**

**Due date: 3 March 2010 (no extension will be granted)**

**Unique number: 212999**

**This is a multiple-choice assignment that must be completed on the mark reading sheet provided.**

**To prepare for this assignment, please read study units 1-7 of the study guide.**

We recommend that you start this assignment as soon as possible. This will enable you to get a good grasp of the subject content early on in your academic cycle.

**QUESTION 1**

Which **ONE** of the following negotiable instruments is also an instrument of payment?

1. Debentures
2. Bills of exchange
3. Share warrants
4. Bonds

**QUESTION 2**

Which **ONE** of the following definitions of a cheque is **INCORRECT**?

1. A bill drawn on a bank and payable on demand.
2. An unconditional order in writing, addressed by one person to a bank, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to a specified person or his order, or to bearer.
3. An unconditional order in writing, addressed by one person to a bank, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, a sum certain in money to a specified person or his order, or to bearer.
4. An unconditional order in writing, addressed by one person to a bank, signed by the person giving it, requiring the bank to pay on demand, a sum certain in money to a specified person or his order, or to bearer.

**QUESTION 3**

Eesa Fredericks draws a cheque on Trust Bank in favour of Alvereen Leonard.

Which **ONE** of the following statements is **CORRECT**?

1. Eesa Fredericks is the drawer; Trust Bank is the payer and Alvereen Leonard is the drawee.
2. Alvereen Leonard is the drawer; Trust Bank is the payee and Eesa Fredericks is the drawee.
3. Eesa Fredericks is the drawer; Trust Bank is the drawee and Alvereen Leonard is the payee.
4. Alvereen Leonard is the payee; Trust Bank is the drawer and Eesa Fredericks is the drawee.

**QUESTION 4**

With reference to the document below, answer the question that follows:

<p><i>TO: Allie or Brian</i></p> <p><i>Please pay to the order of Michelle Kelly or Izelde van Jaarsveld the sum of R1000, being the amount due for services rendered by Michelle Kelly and/or Izelde van Jaarsveld to myself, in monthly instalments of R200 commencing on 1 March 2010. Should any instalment not be paid on due date the full outstanding balance shall become immediately payable.</i></p> <p style="text-align: right;"><i>(Signed): Eesa Fredericks</i></p>
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Choose the **MOST CORRECT** answer.

1. This is a valid bill of exchange because it meets all the requirements listed in section 2 of the Bills of Exchange Act.
2. This is not a valid bill of exchange because the amount payable is in instalments, with the whole amount being due and payable should an instalment not be paid.
3. This is not a valid bill of exchange because it is payable to two payees (namely Michelle Kelly or Izelde van Jaarsveld) in the alternative.
4. This is not a valid bill of exchange because it is payable by two drawees (namely Allie or Brian) in the alternative.

**QUESTION 5**

Which **ONE** of the following statements regarding the functions of signatures is **CORRECT**?

1. The acceptor's signature fulfils a constitutive and guarantee function.
2. The signature of the endorser who is a minor fulfils only a constitutive and not a guarantee or transfer function.
3. The signature of a payee fulfils a guarantee and a transfer function.
4. The signature of the drawee and collecting bank fulfils a constitutive and transfer function.

**QUESTION 6**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Alvereen Leonard draws a cheque on Trust Bank in favour of “Eesa Fredericks” and delivers it to him (Eesa). Eesa endorses this cheque in favour of “Michelle Kelly” and delivers it to her (Michelle). The endorsement and delivery of the cheque by Eesa to Michelle is called....

1. negotiation.
2. issue.
3. endorsement.
4. acceptance.

**QUESTION 7**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Alvereen Leonard draws a cheque on Trust Bank in favour of “Eesa Fredericks or order” and delivers it to him (Eesa). Before delivering the cheque to Eesa, Alvereen Leonard also draws two parallel transverse lines on the face of the cheque.

This cheque is a/an ....

1. order cheque.
2. bearer cheque.
3. non-transferable cheque.
4. non- negotiable cheque.

**QUESTION 8**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Alvereen Leonard draws a cheque on Trust Bank in favour of “Eesa Fredericks only” and delivers it to him (Eesa). When Eesa is in possession of this cheque, he is ....

1. only the holder of the cheque.
2. the holder and the holder in due course of the cheque.
3. the holder, the holder in due course and the possessor of the cheque.
4. only the possessor of the cheque.



**QUESTION 9**

Which **ONE** of the options listed below **MOST CORRECTLY** completes the following statement?

Alvereen Leonard draws a cheque on Trust Bank in favour of "Eesa Fredericks or bearer" and delivers it to him (Eesa). Before Eesa can present this cheque for payment, it is stolen from Eesa by Michelle Kelly. When Michelle is in possession of this cheque, she is ....

1. only the holder of the cheque.
2. the holder and the holder in due course of the cheque.
3. the holder, the holder in due course and the possessor of the cheque.
4. only the possessor of the cheque.

**QUESTION 10**

Which **ONE** of the options listed below **MOST CORRECTLY** completes the following statement?

Alvereen Leonard draws a cheque on Trust Bank in favour of "Eesa Fredericks or order" and delivers it to him (Eesa). Before Eesa can present this cheque for payment, it is stolen from Eesa by Michelle Kelly. When Michelle is in possession of this cheque, she is ....

1. only the holder of the cheque.
2. the holder and the possessor of the cheque.
3. the holder, the holder in due course and the possessor of the cheque.
4. only the possessor of the cheque.

**[TOTAL FOR ASSIGNMENT 01: 10 MARKS]**

**ASSIGNMENT 02 (FIRST SEMESTER 2010)**

**Due date: 24 March 2010 (no extension will be granted)**

To prepare for this assignment, please read through the information contained in Section C units 1-3 of the study guide.

This is a written assignment that is limited in length to one typed page or two hand-written pages.

This assignment does not have a unique number.

We recommend that you start this assignment as soon as possible. This will enable you to get a good grasp of the subject content early on in your academic cycle.

**QUESTION 1**

Mike is the owner of *Exotic Pets* magazine. As he did not find the time to do his own research for an item on iguanas, he translates an article that he found on the Internet. Mike's translation is published in the next edition of *Exotic Pets* magazine.

Accept that copyright subsists in the Internet article.

Does copyright subsist in Mike's translation?

**[4]**

**QUESTION 2**

Pumla is starting her own business. She instructs Lisa, a freelance graphic designer, to design a logo. Pumla is very pleased with the end result and immediately pays Lisa in full.

Accept that copyright subsists in the logo.

(a) Who is the author of the logo?

(2)

(b) Who is the owner of the copyright in the logo?

(2)

(c) What is the duration of the copyright in the logo?

(2)

**[6]**

**[TOTAL FOR ASSIGNMENT 02: 10 MARKS]**

**ASSIGNMENT 03 (FIRST SEMESTER 2010)**

This assignment contains a number of self-evaluation questions. PLEASE NOTE THAT YOU MAY NOT SUBMIT THIS ASSIGNMENT TO BE MARKED. You will be provided with model answers and must evaluate your attempt at Assignment 03 using these answers.

**SECTION A: NEGOTIABLE INSTRUMENTS****QUESTION 1**

Define the following terms in the context of negotiable instruments:

- (a) Acceptance (4)
- (b) Holder (3)
- (c) A cheque (3)
- [10]**

**QUESTION 2**

In *Standard Bank of South Africa Limited v Sham Magazine Centre* 1977 (1) SA 484 (A) the Appellate Division (as it was then known) came to the conclusion that the *Dungarvin* case did not correctly reflect the law. Discuss the decision of the appeal court with reference to the transferability of cheques.

**[10]****QUESTION 3**

Explain whether **X** is a holder, **and** a holder in due course, or a mere possessor.

- (a) A draws a bill on B in favour of C or order and delivers it to C. C delivers the bill to X with the intention of transferring his rights to X but neglects to indorse the bill. (5)
- (b) A draws an uncrossed cheque on B bank in favour of X or order and delivers it to him. (3)
- (c) A draws a bill on B in favour of C and delivers it to him. C indorses the bill and delivers it to X when the bill was overdue. (2)
- [10]**

**QUESTION 4**

A draws a bill on B in favour of C or bearer. C negotiates it to D. D presents it to B who refuses to make payment to D. Can D hold C liable? **[8]**

**QUESTION 5**

C sells a watch to A. In terms of the agreement, the watch has to be a Rolex. C, however, delivers a cheap imitation of a Rolex. As A is not aware of the fraud, he pays C with a cheque for R50 000,00. The cheque was drawn on B Bank in favour of C or order. C immediately negotiates the cheque to D. D is unaware of C's fraud. When A becomes aware of C's fraud, he stops his cheque. D claims R50 000,00 from A. Will D be able to sue A successfully for R50 000?

**[10]****QUESTION 6**

A draws a bill on B payable to "C or order" and delivers it to C. D steals the bill from C, forges C's signature on the back of the bill and delivers it to E. E changes the forged "indorsement" to an indorsement in his (E's) name, signs the bill and delivers it to X, who takes it in good faith and for value. Can X enforce payment of the bill against any of the following parties?

- (a) A (2)
- (b) C (2)
- (c) D (2)
- (d) E (6)

**[12]****TOTAL FOR SECTION A: 60 MARKS**

**SECTION B: INTELLECTUAL PROPERTY LAW AND COMPETITION LAW**

**QUESTION 7**

Peter is employed by Gamesoft, a software company. Peter makes a schematic representation or flow chart in order to create a computer program that will make it possible to play video games on a computer. This computer program is called Viplayer.

- (a) Identify the relevant copyright work/s and its author/s. (4)
- (b) In the course of his employment Peter makes copies of Viplayer for back-up purposes. Will this amount to copyright infringement? (4)
- (c) Gamesoft dismisses Peter. Peter reproduces one of the back-up copies of Viplayer and sells the reproduction to a computer software shop. Will this reproduction amount to copyright infringement? (2)
- [10]**

**QUESTION 8**

- (a) Muthu is a postgraduate student in law. Muthu writes a dissertation on 'Patent Law and Knowledge'. Muthu makes extensive use of a book entitled 'Patent Law in South Africa'. Will this use amount to copyright infringement? (2)
- (b) Will there be any statutory defence on which Muthu can rely? (4)
- (c) In his dissertation, Muthu refers to various books and journals. Does the dissertation comply with the requirement of originality? Discuss this requirement. (4)
- [10]**

**QUESTION 9**

R is the proprietor of the trade mark STARGAZER which is registered in respect of wine. Since 1990 R has marketed his STARGAZER wines intensively. According to a recent market survey, the STARGAZER brand is one of the most popular brands of wine in South Africa. S commences marketing a new range of designer wine bottle openers under the trade mark STARGAZER.

- (a) Can R prevent S from using the trade name STARGAZER for wine bottle openers in South Africa? (5)
- (b) Would your advice have been different if S had marketed sunglasses under the STARGAZER mark? (5)
- [10]**

**QUESTION 10**

Jane was employed by Alton Fertilizers Ltd. After being dismissed, Jane took the customer lists of Alton Fertilizers Ltd and subsequently established her own fertilizer company. Alton Fertilizers Ltd discovers that Jane has approached its customers and has offered to sell them her fertilizers at discount prices. Advise Alton Fertilizers Ltd on whether it has a remedy under private law of competition against Jane. **[10]**

**TOTAL FOR SECTION B: 40 MARKS**

**TOTAL: 100 MARKS**

<b>ASSIGNMENTS FOR THE SECOND SEMESTER OF 2010</b>
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**ASSIGNMENT 01 (SECOND SEMESTER 2010)**

**Due date: 2 August 2010 (no extension will be granted)**

**Unique number: 254269**

**This is a multiple-choice assignment that must be completed on the mark reading sheet provided.**

**To prepare for this assignment, please read study units 1-7 of the study guide.**

We recommend that you start this assignment as soon as possible. This will enable you to get a good grasp of the subject content early on in your academic cycle. **However, you may only submit this assignment from 1 July 2010.**

**QUESTION 1**

Which **ONE** of the following negotiable instruments is also an instrument of payment?

1. Debentures
2. Share warrants
3. Promissory notes
4. Bonds

**QUESTION 2**

Which **ONE** of the following statements is **MOST CORRECT**?

1. The three essential parties to a bill are the drawer, the payer and the drawee.
2. The three essential parties to a bill are the drawer, the acceptor and the payee.
3. The three essential parties to a bill are the drawer, the drawee and the payee.
4. The three essential parties to a bill are the drawer, the payer and the endorser.

**QUESTION 3**

Eesa Fredericks draws a cheque on Royal Bank payable to Alvereen Leonard. Alvereen Leonard endorses the cheque specially in favour of "Michelle Kelly".

Which **ONE** of the following statements is **MOST CORRECT**?

1. Alvereen Leonard is the drawer; Royal Bank is the payer, Eesa Fredericks is the drawee and Michelle Kelly is the endorsee.
2. Alvereen Leonard is the payee; Royal Bank is the drawee. Eesa Fredericks is the drawer and Michelle Kelly is the endorsee.
3. Alvereen Leonard is the drawer; Royal Bank is the drawee, Eesa Fredericks is the payee and Michelle Kelly is the endorser.
4. Alvereen Leonard is the payee; Royal Bank is the drawee and Eesa Fredericks is the drawer and Michelle Kelly is the endorser.

**QUESTION 4**

With reference to the document below, answer the question that follows:

<p>TO: <i>Allie and Brian</i></p> <p><i>Pay to the order of Michelle Kelly or Izelde van Jaarsveld the sum of R1000, being the amount due for services rendered by Michelle Kelly and/or Izelde van Jaarsveld to myself, in monthly instalments of R200 commencing on 1 August 2010. Should any instalment not be paid on due date the full outstanding balance shall become immediately payable.</i></p> <p><i>Sans recours</i> <span style="float: right;">(Signed): <i>Eesa Fredericks</i></span></p>
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Choose the **MOST CORRECT** answer.

1. This is a valid bill of exchange because it meets all the requirements listed in section 2 of the Bills of Exchange Act.
2. This is not a valid bill of exchange because the amount payable is in instalments, with the whole amount being due and payable should an instalment not be paid.
3. This is not a valid bill of exchange because Eesa Fredericks has indicated (by adding the words “*sans recours*”) that he is not liable on the bill.
4. This is not a valid bill of exchange because it is payable by two drawees (namely Allie and Brian).

**QUESTION 5**

Which **ONE** of the following statements regarding the functions of signatures is **CORRECT**?

1. The signature of an acceptor fulfils both a constitutive and guarantee function.
2. The signature of the acceptor fulfils a guarantee and a transfer function.
3. The signature of an endorser fulfils a guarantee and a transfer function.
4. The signature of the endorsee fulfils a guarantee and a transfer function.

**QUESTION 6**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

If a cheque is endorsed in blank, this endorsement results in the cheque being...

1. an order cheque
2. a bearer cheque.
3. a “not negotiable” cheque.
4. a “not transferable” cheque.

**QUESTION 7**

Which **ONE** of the following statements regarding the different types of endorsements is **CORRECT**?

1. A special endorsement consists of a signature coupled with a direction to "Pay X or bearer" and ensures that the cheque remains payable to order.
2. A conditional endorsement consists of only a signature and changes an order cheque to a bearer cheque.
3. The cheque may be made completely non-transferrable by adding to the signature the words "Pay X only".
4. A restrictive endorsement is an instruction to the bank that it should only pay another bank.

**QUESTION 8**

Alvereen Leonard draws a cheque on Trust Bank in favour of "Eesa Fredericks" and delivers it to him (Eesa). Eesa uses the cheque to pay Michelle Kelly. To this end, he writes "Pay Michelle Kelly only" on the back of the cheque and signs it. When Michelle is in possession of this cheque, she is ....

1. only the holder of the cheque.
2. the holder and the holder in due course of the cheque.
3. the holder in due course and the possessor of the cheque.
4. only the possessor of the cheque.

**QUESTION 9**

Alvereen Leonard draws a cheque on Trust Bank in favour of "Eesa Fredericks" and delivers it to him (Eesa). Before Eesa can present this cheque for payment, it is stolen from Eesa by Michelle Kelly. When Michelle is in possession of this cheque, she is ....

1. only the holder of the cheque.
2. the holder and the holder in due course of the cheque.
3. the holder, the holder in due course and the possessor of the cheque.
4. only the possessor of the cheque.

**QUESTION 10**

If the payee of an order cheque is a fictitious person, the document may be treated as a/an ...

1. bearer cheque
2. order cheque
3. "not negotiable" cheque
4. "not transferable" cheque

**[TOTAL FOR ASSIGNMENT 01: 10 MARKS]**



**ASSIGNMENT 02 (SECOND SEMESTER 2010)****Due date: 27 August 2010 (no extension will be granted)****To prepare for this assignment, please read through the information contained in Section C units 1-3 of the study guide.****This is a written assignment that is limited in length to one typed page or two hand-written pages.****This assignment does not have a unique number.**

We recommend that you start this assignment as soon as possible. This will enable you to get a good grasp of the subject content early on in your academic cycle.

ABC (Pty) Ltd, a shoe manufacturer, is the proprietor of the SOFTSOLE trade mark which is registered in respect of comfort footwear. XYZ CC begins to use the SOFFTSOUL mark on their competing comfort footwear. XYZ CC files an application to register the SOFFTSOUL mark as a trade mark in respect of comfort footwear. ABC (Pty) Ltd approaches you for legal advice.

- (a) Advise ABC (Pty) Ltd whether XYZ CC's conduct amounts to an infringement of their registered trade mark and, if so, what form of infringement is involved. (5)
- (b) Mention any two subsections of Section 10 of the Trade Marks Act 194 of 1993 which will prevent XYZ CC from registering the SOFFTSOUL mark in respect of comfort footwear. (2)
- (c) Will XYZ's conduct also constitute an infringement of ABC's right to attract custom or goodwill? If so, identify the relevant form of unlawful competition and state the requirements for such an action. (3)

**[TOTAL FOR ASSIGNMENT 02: 10 MARKS]**

**ASSIGNMENT 03 (SECOND SEMESTER 2010)**

This assignment contains a number of self-evaluation questions and answers. PLEASE NOTE THAT YOU MAY NOT SUBMIT THIS ASSIGNMENT TO BE MARKED. You will be provided with model answers and must evaluate your attempt at Assignment 03 using these answers.

**SECTION A: NEGOTIABLE INSTRUMENTS****QUESTION 1**

Define the following terms in the context of a bill of exchange:

- |                           |             |
|---------------------------|-------------|
| (a) Delivery              | (3)         |
| (b) Issue                 | (3)         |
| (c) Payment in due course | (4)         |
|                           | <b>[10]</b> |

**QUESTION 2**

Discuss the liability of the collecting bank towards the true owner with reference to recent case law. **[10]**

**QUESTION 3**

Briefly discuss the differences between sections 58 and 79 of the Bills of Exchange Act 34 of 1964 with regard to the protection of the drawee bank. **[6]**

**QUESTION 4**

A draws a cheque on B Bank payable to "C or order". D steals the cheque from C, forges C's signature on the back of the cheque and delivers it to E. E indorses the cheque and delivers it to X, who takes it in good faith and for value.

Can X enforce payment against any of the parties? Explain fully. **[9]**

**QUESTION 5**

On 12 May 2006 B sells a fridge to G for R2 000. G pays by cheque. The cheque is drawn on C Bank and made payable to "B or order". Three days after B delivers the fridge, G discovers that the fridge is emitting a noxious gas. He immediately returns the fridge to B and stops payment of the cheque.

- |                                      |            |
|--------------------------------------|------------|
| (a) Can B hold G liable for payment? | <b>(2)</b> |
|--------------------------------------|------------|

- (b) Assume that on 13 May 2006, B uses the cheque to repay a debt which he owed to R. B endorses the cheque in favour of "R or order" and delivers it to him. When R presents the cheque for payment, he is told that payment had been stopped. Can R hold G liable for payment? Explain fully.

(8)  
[10]

### QUESTION 6

A draws a cheque for R5 000 on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable". At C's request A posts the cheque to him. D steals the cheque before it reaches C. D forges C's signature as indorser and delivers it to E who takes it in good faith and for value. E gives the cheque to his messenger, Y, to pay it into his (E's) account at S Bank. E owes S Bank R10 000 on overdraft. Therefore, S Bank sets off the deposited cheque against the amount owed by E. B Bank pays S Bank in good faith and without negligence. Discuss whether or not C can institute a legal action against the following parties:

- (a) A (2)  
(b) B Bank (2)  
(c) D (2)  
(d) E (5)  
(e) S Bank (3)  
(f) Y (1)

[15]

**TOTAL FOR SECTION A: 60 MARKS**

**SECTION B: INTELLECTUAL PROPERTY LAW AND COMPETITION LAW****QUESTION 7**

Tom is a graphic artist who is designing a logo for a client's new business. Tom incorporates into the logo a photograph that he found on the Internet.

Accept that the logo infringes the copyright in the photograph.

Can copyright subsist in the logo? Give reasons for your answer. [6]

**QUESTION 8**

Graham has been a full-time employee of the proprietor of the *Lovely Lady* magazine for many years. Part of his job description is to write an entertaining essay for the last page of every edition of the magazine. Graham is approached by ABC Publishers, who is interested to publish a selection of his essays that had appeared in *Lovely Lady* in book form.

Accept that copyright subsists in the essays. Answer the following questions and give brief reasons for each answer.

- (a) Who is the author of the essays? (2)
- (b) Who is the owner of the copyright in the essays for purposes of publication thereof in book form? (2)
- (c) What is the duration of the copyright in the essays? (2)
- [6]**

**QUESTION 9**

Section 11B of the Copyright Act 98 of 1878 provides that, in relation to a computer program, only the copyright owner may do or authorise certain acts. Name three such exclusive rights.

**[3]**

**QUESTION 10**

Mary is the owner of a small factory that produces designer stationery. It has come to her attention that some of her products, such as letter openers with ornamented handles, are being reproduced by another manufacturer. Mary wants to institute an action for copyright infringement against the other manufacturer.

Is there a statutory defence that the other manufacturer can rely on? Explain. [5]

**QUESTION 11**

Tladi owns a chain of coffee shops called 'Café Coffee' in Northern Africa. Maite visited one of these shops and wants to open similar shops in South Africa. 'Café Coffee' is well known in Northern Africa and in South Africa. Although Tladi has registered the name 'Café Coffee' as a trade mark in relation to restaurant services and coffee shops throughout North Africa, she has not registered the name as a trade mark in South Africa. Advise Maite:

(a) whether there are any provisions in the Trade Marks Act which will prevent her from registering 'Café Coffee' as a trade mark in South Africa. (4)

(b) whether Tladi can prevent her from using the trade name 'Café Coffee' for coffee shops in South Africa. (6)

**[10]****QUESTION 12**

What right of the competitor is infringed by unlawful competition? [1]

**QUESTION 13**

Name three criteria for judging the wrongfulness of competitive conduct. [3]

**QUESTION 14**

What must be proved to succeed with an action for passing off? [2]

**QUESTION 15**

Mike was employed by Corporate Clothing Providers (Pty) Ltd. After being dismissed, Mike took the customer lists of Corporate Clothing Providers (Pty) Ltd and subsequently established his own company. Corporate Clothing Providers (Pty) Ltd discovers that Mike has approached its clients to sell them corporate clothing for their personnel at discount prices.

Corporate Clothing Providers (Pty) Ltd approaches you for advice. They understand that the misappropriation of a competitor's trade secrets or confidential information would amount to unlawful competition, but want to know from you whether the client lists in question qualify as trade secrets.

Advise them regarding this aspect. [4]

**TOTAL FOR SECTION B: 40 MARKS**  
**TOTAL: 100 MARKS**