

**MRL201-J**

October/November 2006

**MERCANTILE LAW 201**

Duration : 2 Hours

100 Marks

**EXAMINERS :**

FIRST : MS AX LEONARD PROF

SECOND : BR RUTHERFORD

This paper consists of 3 pages.

**ANSWER ALL QUESTIONS. REFER TO THE NECESSARY AUTHORITIES.**

**SECTION A: LAW OF NEGOTIABLE INSTRUMENTS**

**QUESTION 1**

Define the following terms with reference to a bill of exchange:

- (a) Holder (2)
  - (b) Cheque (2)
  - (c) 'Good faith' (3)
  - (d) Acceptance (3)
- [10]

**QUESTION 2**

Briefly discuss the **decision** of the court in *Standard Bank of South Africa v Sham Magazine Centre* 1977

(1)SA484(A).

[7]

**QUESTION 3**

Briefly discuss the liability of the drawer and the indorser who signs a cheque in a representative capacity.

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**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 signs the cheque and delivers it to X, who takes it in good faith and for value.

Explain fully whether X can enforce payment against E.

[7]

**QUESTION 5**

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A draws an uncrossed cheque on B Bank in favour of C or order. X steals the cheque from C, forges C's signature on the back of the cheque and presents the cheque for payment at B Bank. X obtains payment from B Bank over the counter.

- (a) What protection will B Bank, in the abovementioned example, enjoy in respect of the forged indorsement? (7)
- (b) Would the position differ if X, at B Bank, professes to be the payee C and forged C's signature on the back of the cheque in the presence of the teller? Give reasons for your answer. (3)

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**QUESTION 6**

A draws a crossed cheque marked "not negotiable" on B Bank in favour of "C only" in repayment of a loan.

At C's request A posts the cheque to him. X intercepts and steals the cheque before it reaches C. X forges C's signature and delivers it to D who takes it in good faith and for value. D deposits the cheque for collection in his bank account with S Bank. S Bank presents the cheque for payment to B Bank. B Bank pays S Bank in good faith and without negligence. B Bank debits the account of its customer, A and S Bank credits the account of its customer, D.

Advise C fully about his rights against the following parties with reference to decided cases and the Bills of Exchange Act 34 of 1964:

- (a) A (5)
- (b) D (5)
- (c) S Bank (10)

**TOTAL FOR SECTION A: 60 MARKS**

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

**QUESTION 7**

Genie, a computer genius, works for Intelligent Solutions, a computer software developer. In his spare time he writes a computer program that can solve complex mathematical problems. His friend, Tsepo, buys a copy of the program.

- Who will be the author and copyright owner of the computer program? Motivate, -s 1 0 (2)2
- (b) Will Tsepo be entitled to make a copy of the program? (4) 1
- (c) Tsepo adapts the computer program so that it can work on another type of computer system. Will Tsepo infringe the copyright in the program? (2)
- (d) What is the duration of the copyright in the computer program? (2)
- [10]

**QUESTION 8**

Bozi, a well known singer, commissions Mr Say Cheese to take photographs of his wife Sebo, and their new-born baby. The Glitz, a magazine that publishes the doings of the rich and famous, gets hold of the photographs and publishes them.

- (a) What are the requirements for the subsistence of copyright in the photographs? (4)
- (b) Who will be the author AND copyright owner of the photographs? Motivate. (3)
- (c) Will The Glitz be infringing copyright? Motivate. (3)

[10]

**QUESTION 9**

The Trade Marks Act covers three types of trade mark infringements. List and discuss these three types of infringements.

[10]

**QUESTION 10**

Discuss the criteria for unlawfulness in the private law of competition.

[10]

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

