UNIVERSITY EXAMINATIONS UNIVERSITEITSEKSAMENS

UNISA
UNIVERSITY OF SOUTH AFRICA

MRL201-J

October/November 2004

MERCANTILE LAW 201

Duration : 2 Hours 100 Marks

EXAMINERS :
FIRST : MS AI LEONARD
SECOND : PROF BR RUTHERFORD

This paper consists of 3 pages.

ANSWER ALL QUESTIONS. REFER TO THE NECESSARY AUTHORITIES.

SECTION A: THE LAW OF NEGOTIABLE INSTRUMENTS

QUESTION 1

Define the following terms in the context of negotiable instruments:

(a) Payment in due course (4)

(b) Cheque (3)

(c) Acceptance (3)
[10]

QUESTION 2

(a) Explain whether X is a holder or a holder in due course, or a possessor.

(i) A draws a cheque on B Bank in favour of "C or order". The cheque is crossed generally with the words "not negotiable" across its face. C indorses the cheque in blank and delivers it to X, who takes it in good faith and for value. (4)

(ii) A draws a cheque on B Bank in favour of "C or order" and delivers the cheque to C. C is a minor and without the assistance of his guardian he indorses the cheque specially to X and delivers it to X, who takes it in good faith and for value. (4)

[TURN OVER]

(b) Read the following scenario and answer the question given. Your answer should include explanations.

Suppose 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? In your answer you should also explain whether X is a holder, a holder in due course, or a possessor. (12)

[20]

QUESTION 3

(a) Name and briefly discuss the requirements that must all be present simultaneously before a drawee bank will be protected in terms of section 58 of the Bills of Exchange Act. (7)

(b) Name four rights that a holder of a bill has in terms of the Bills of Exchange Act. (4)

(c) What is the effect of a special crossing on a cheque? (2)

(d) Identify the different types of indorsements used in the following examples:

(i) Pay Natania Lock only
(signed) *Michelle Kelly* (1)

(ii) (signed) *Michelle Kelly* (1)

[15]

QUESTION 4

A draws a crossed cheque 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 negotiates 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 Amendment Act of 2000:

(a) the drawer, A (5)
(b) S Bank (10)

[15]

TOTAL FOR SECTION A: 60 MARKS

SECTION B: INTELLECTUAL PROPERTY LAW AND COMPETITION LAW

QUESTION 5

(a) X is a Kwaito singer. Y, an employee of MBH Records, writes a song for X to sing. MBH records the song and instructs Z, a freelance photographer, to take X's photo for the cover of the album.

(i) Identify the specific works which are eligible for copyright protection. (2)

(ii) Who is the author of each of the specific works? (4)

(iii) Who is the copyright owner of each of the specific works? (4)

(b) X, a computer programmer, worked for MIC, a computer software company. While in the employ of MIC, X wrote a program for doctors for the charging of fees called "Medfees." X made a back up copy of "Medfees" for his own use. X later resigned from MIC. X then wrote a similar computer program called "Healthfees." X made considerable use of the backup copy of "Medfees" in writing "Healthfees."

(i) Advise MIC whether X was entitled to make a backup copy of "Medfees"? (5)

(ii) Does "Healthfees" infringe MIC's copyright in "Medfees"? (5)

[20]

QUESTION 6

R, a Dutch company, manufactures fertilizers under the name "Triomf." Triomf is registered as a trade mark in the Netherlands. Triomf fertilizers have become well known in South Africa through advertising in agricultural magazines. S, a South African company, translated the name "Triomf" into "Triumph." S then uses "Triumph" as the trade mark for its own fertilizers. Are there any grounds under the Trade Marks Act on which R can prevent S from using the trade mark "Triumph" for fertilizers. Discuss fully. (10)

[10]

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QUESTION 7

GS TV operates a television channel. On weekends, GS TV presents a game show in which the holders of tickets containing lucky numbers get a chance to win large prizes. GS TV channels' game show is called 'Lotto.' Lotto is extremely popular in South Africa. In order to increase its number of viewers, PR TV introduces a similar game show on its channel which it calls "Lotta." Advise GS TV whether it has any action against PR TV on the ground of passing off. (10)

[10]

TOTAL FOR SECTION B: 40 MARKS
TOTAL: [100] MARKS

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MRL201-J

Oktober/November 2004

HANDELSREG 201

Tydsduur : 2 Uur 100 Punte

EKSAMINATORE :
EERSTE : ME AI LEONARD
TWEEDE : PROF BR RUTHERFORD

Hierdie vraestel bestaan uit 3 bladsye.

ANTWOORD AL DIE VRAE. VERWYS NA DIE NODIGE GESAGSBRONNE.

AFDELING A: DIE REG AANGAANDE VERHANDELBARE DOKUMENTE

VRAAG 1

Defineer die volgende terme met verwysing na verhandelbare dokumente:

(a) Reëlmatige betaling (4)

(b) Tjek (3)

(c) Akseptasie (3)

[10]

VRAAG 2

(a) Verduidelik of X 'n houer, 'n reëlmatige houer of 'n besitter is.

(i) A trek 'n tjek op B-bank ten gunste van "C of order". Die tjek is algemeen gekruis met die woorde "nie verhandelbaar nie" op die voorkant. C endoseer die tjek in blanko en lewer dit aan X wat dit te goeder trou en vir waarde neem. (4)

(ii) A trek 'n tjek op B-bank ten gunste van "C of order" en lewer die tjek aan C. C is 'n minderjarige en sonder die bystand van sy voog endosseer hy die tjek spesiaal op naam van X en lewer dit aan X wat dit te goeder trou en vir waarde neem. (4)

(b) Lees die volgende scenario en antwoord the gegewe vraag. U antwoord moet verduidelikings bevat.

Gestel A trek 'n tjek op B-bank ten gunste van "C of order". D steel die tjek van C, vervals C se handtekening op die rugkant van die tjek en lewer dit aan E. E endoseer die tjek en lewer dit aan X, wat dit te goede trou en vir waarde neem. Kan X betaling van enige van die partye eis? In u antwoord moet u ook verduidelik of X 'n houer, 'n reëlmatige houer of 'n besitter is. (12)

[20]

VRAAG 3

(a) Noem en bespreek kortliks die vereistes wat gelyktydig teenwoordig moet wees alvorens 'n betrokkene bank ingevolge artikel 58 van die Wisselwet beskerming sal geniet. (7)

(b) Noem vier regte wat 'n houer van 'n wissel ingevolge die Wisselwet besit. (4)

(c) Wat is die effek van 'n spesiale kruising op 'n tjek? (2)

(d) Identifiseer die verskillende tipes endossemente wat in die volgende voorbeelde gebruik is:

(i) Betaal Natania Lock alleenlik
(geteken) *Michelle Kelly* (1)

(ii) (geteken) *Michelle Kelly* (1)

[15]

VRAAG 4

A trek 'n gekruiste tjek op B-bank ten gunste van "C alleen" ter betaling van 'n lening. Op C se versoek pos A die tjek aan hom. X onderskep die tjek en steel dit voordat dit C bereik. X vervals C se handtekening en verhandel dit aan D wat dit te goeder trou en vir waarde neem. D deponeer die tjek in sy rekening by S-bank ter invordering. S-bank bied die tjek aan vir betaling by B-bank. B-bank betaal S-bank te goeder trou en sonder nalatigheid. B-bank debiteer die rekening van sy kliënt, A en S-bank krediteer die rekening van sy kliënt, D.

Adviseer C volledig oor sy regte teenoor die volgende partye met verwysing na besliste sake en die Wisselwysigingswet van 2000:

(a) Die trekker, A (5)
(b) S-bank (10)

[15]

TOTAAL VIR AFDELING A: 60 PUNTE

AFDELING B: INTELLEKTUEELGOEDEREREG EN MEDEDINGINGSREG

VRAAG 5

(a) X is 'n Kwaito sanger. Y, 'n werknemer van MBH Platemaatskappy, skryf 'n liedjie vir X om te sing. MBH neem die liedjie op en gee opdrag aan Z, 'n vryskutfotograaf, om X se foto's vir die omslag van die musiekalbum te neem.

(i) Identifiseer al die werke wat vir outeursregbeskerming kwalifiseer. (2)

(ii) Wie is die outeur van elk van die betrokke werke? (4)

(iii) Wie is die outeursregeienaar van elk van die betrokke werke? (4)

(b) X, 'n rekenaarprogrammeerder, het vir MIC, 'n rekenaar sagteware maatskappy gewerk. Terwyl hy in diens by MIC was, het X 'n program vir dokters vir die hef van fooie geskryf. Hy noem die program "Medfooie". X maak 'n rugsteunkopie van "Medfooie" vir sy eie gebruik. X bedank later by MIC. Hy skryf daarna 'n soortgelyke program genaamd "Gesondheidsfooie". X maak aansienlik van die rugsteunkopie van "Medfooie" gebruik tydens die skryf van "Gesondheidsfooie".

(i) Adviseer MIC of X daarop geregtig was om 'n rugsteunkopie van "Medfooie" te maak? (5)

(ii) Skend "Gesondheidsfooie" MIC se outeursreg in "Medfooie"? (5)

[20]

VRAAG 6

R, 'n Nederlandse maatskappy, vervaardig kunsmis onder die naam "Triomf". Triomf is as handelsmerk in Nederland geregistreer. Triomf kunsmis het baie bekend in Suid-Afrika geword deur advertensies in landboutydskrifte. S, 'n Suid-Afrikaanse maatskappy, vertaal die naam "Triomf" na "Triumph". S gebruik "Triumph" as handelsmerk vir sy eie kunsmis. Is daar enige gronde ingevolge die Wet op Handelsmerke waarop R vir S kan verhinder om die handelsmerk "Triumph" vir kunsmis te gebruik? Bespreek volledig. (10)

[10]

VRAAG 7

GS TV bestuur 'n televisiekanaal. Op naweke bied GS TV 'n spelprogram aan waarin die houers van kaartjies waarop gelukkige nommers verskyn die kans staan om groot pryse te wen. GS TV kanaal se spelprogram word "Lotto" genoem. "Lotto" is besonder gewild in Suid-Afrika. Ten einde sy kykertal te verhoog, begin PR TV 'n soortgelyke spelprogram op sy kanaal wat "Lotta" genoem word. Adviseer GS TV of dit enige aksie gebaseer op aanklamping teen PR TV het. (10)

[10]

TOTAAL VIR AFDELING B: 40 PUNTE
TOTAAL: [100] PUNTE

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