

MRL4801

October/November 2012

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

Duration 2 Hours

100 Marks

 EXAMINERS
 FIRST
 SECOND

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Closed book examination

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This paper consists of 5 pages

NB: ANSWER ALL THE QUESTIONS. REFER IN YOUR ANSWERS TO THE NECESSARY AUTHORITIES.

**SECTION A:
THE LAW OF NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

QUESTION 1: NEGOTIABLE INSTRUMENTS

- (a) Define the following terms in the context of negotiable instruments
- (i) Payment in due course (4)
 - (ii) A cheque (3)
- (b) Discuss the differences between sections 58 and 83 of the Bills of Exchange Act 34 of 1964 (4)
- (c) A draws a bill on B in favour of "C or order" Upon receipt of this bill, C negotiates it to D by endorsement completed by delivery D in turn negotiates the bill (by endorsement completed by delivery) to E After presenting the bill for acceptance, E approaches you for some advice
- Explain to E, under which circumstances he, as holder, may lose the right of recourse against the endorser, D, and the drawer A (5)

[TURN OVER]

- (d) A draws a bill on B in favour of "C or bearer" and negotiates the bill to D. D presents it to B who refuses to make payment to D.

Can D hold C liable? (6)

- (e) 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 any of the following parties

- | | | |
|-------|---|------------|
| (i) | A | (2) |
| (ii) | C | (2) |
| (iii) | E | (4) |
| | | (8) |

- (f) A draws a cheque for R5 000 on B Bank in favour of "C or order". At C's request A posts the cheque to C. The cheque is crossed and marked "not negotiable account payee only". D intercepts and steals the cheque before it reaches C. D forges C's signature and negotiates the cheque to E, who takes it in good faith and for value. E gives the cheque to his messenger, Y to pay it into E's bank account at S Bank. E owes S Bank R10 000. S Bank applies the deposited cheque of R5 000 towards the reduction of E's debt. 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

- | | | |
|-------|--------|-------------|
| (i) | A | (3) |
| (ii) | B Bank | (3) |
| (iii) | D | (2) |
| (iv) | E | (5) |
| (v) | S Bank | (5) |
| (vi) | Y | (2) |
| | | (20) |

TOTAL QUESTION 1: [50]

[TURN OVER]

QUESTION 2: OTHER METHODS OF PAYMENT

- (a) Read the following scenario and answer the questions that follow

Standard Bank issues a VISA credit card to Philile Zwane, an existing client. Standard Bank also concludes an agreement with Thula Pharmacy (Pty) Ltd a pharmacy franchise, in terms of which the latter agrees to accept all VISA credit cards issued by the Standard Bank as valid payment method for purchases made at Thula Pharmacy (Pty) Ltd

- (i) What type of credit card is the VISA Card in this set of facts? (1)
 (ii) Identify the card issuer (1)
 (iii) Identify the supplier (1)
 (iv) Philile wants to use her VISA credit card to make a payment. Can Thula Pharmacy (Pty) Ltd refuse to accept Philile's VISA credit card as a payment method? (2)
(5)
- (b) Describe what an electronic funds transfer is. (2)
- (c) There are a limited number of exceptions where the issuing bank may refuse to enforce a documentary letter of credit (3)
- List THREE of these exceptions. (3)

TOTAL QUESTION 2: [10]**TOTAL FOR SECTION A: 60 MARKS**
**SECTION B:
INTELLECTUAL PROPERTY AND COMPETITION LAW**
QUESTION 3: COPYRIGHT

- (a) While daydreaming in class, Kganya scribbles an English poem at the back of her Mathematics handbook. It is similar to a poem by Mahlasedi, which is one of their prescribed works for Sepedi Home Language grade 12

Assume that copyright subsists in the Sepedi poem and that Mahlasedi is the owner of the copyright therein

- (i) What type of copyright "work" is a poem? (1)
 (ii) What would the duration of copyright in Mahlasedi's poem be? (2)
 (iii) On what exclusive right of Mahlasedi is Kganya infringing? (1)
 (iv) Is it possible for Kganya to have copyright in her English poem? (3)
(7)

[TURN OVER]

- (b) Meagan is planning a special party for her husband's 40th birthday and wants to commission a professional photographer to take pictures at the event. Meagan wants to be the owner of the copyright in these photos.

Advise her fully

(10)

- (c) ABC Productions are making a documentary film about Pretoria's jacaranda trees. Some scenes are filmed in the gardens of a university campus in the city that also features many giant sculptures situated among the trees and buildings. As the presenter is pointing out the oldest trees on the terrain, some of these sculptures are visible in the background.

Is this film infringing the copyright in the sculptures?

(3)

TOTAL QUESTION 3: [20]

QUESTION 4: TRADE MARKS

- (a) A, a manufacturer of sweets and chocolates, wishes to market a new range of chocolates. His marketing department suggests that they call the chocolates SWEET AND SMOOTH.

Can the name SWEET AND SMOOTH be registered as a trade mark?

(3)

- (b) R is the proprietor of the HADEDAS IN FLIGHT trade mark which is registered in South Africa in respect of whisky. S commences marketing a new range of wine in South Africa under the FLIGHT OF THE HADEDA mark.

Does S infringe on R's trade mark? Explain

(7)

TOTAL QUESTION 4: [10]

QUESTION 5: UNLAWFUL COMPETITION

- (a) Mary is a manufacturer of cosmetic products which she markets under the mark SKIN-DEEP. The SKIN-DEEP mark has not been registered as a trade mark. The SKIN-DEEP range proves extremely popular. Queen starts marketing a range of cosmetic products in competition with Mary. Queen's products are marketed under the mark SKIN-DIP and in a similar packaging to that used by Mary.

Advise Mary whether there are any grounds on which she can institute action against Queen under the law of competition

(5)

[TURN OVER]

- (b) ABC Beers launches a new advertising campaign. It consists of a table comparing its three most popular beers with the three most popular beers produced by FJH Beers. The table includes information on the number of vitamins and minerals added by ABC Beers to its beers, and shows that FJH Beers does not add vitamins or minerals to its beers. This information is correct.

Can FJH Beers institute an action against ABC Beer for unlawful competition because of this comparative advertising? (5)

TOTAL QUESTION 5: [10]

TOTAL FOR SECTION B: 40 MARKS

TOTAL: 100 MARKS