

COURSE OUTLINE

LAW OF BANKING AND PAYMENTS

FEBRUARY 2021

OVERVIEW

Law of Banking and Payments is an elective course taught in the final year of the LLB programme. The Banking and Payments course covers a wide range of issues and topics of interest and importance not only to those students contemplating careers as banking lawyers, but also to those intending to practise as general corporate or commercial lawyers. The course includes sections on: 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; documentary credits; issues surrounding the Financial Intelligence Centre Act ('FICA'), particularly measures aimed at the detection and prevention of money laundering; an overview of the Prevention of Organised Crime Act ('POCA') and the obligations which that act imposes on professionals and business people; and an overview of banking regulation.

While the focus of the course is obviously South African law, we will occasionally look at English, Zimbabwean and Zambian law both for comparative purposes and because many of South Africa's financial laws and regulations have their origins in English law.

LECTURER

The course is lectured by Adv. Craig Renaud, whose office is situated on the top floor of the Faculty building. Students who wish to meet with Adv. Renaud to discuss any issues arising out of the course are urged to make an appointment with him by e-mail at c.renaud@ru.ac.za

CREDIT VALUE

The credit value of this course is 9 semester credits.

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 read, interpret and extract legal principles from legislation, court decisions and other source materials;
- 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; working in groups in dispensing advice to potential clients.

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.
- demonstrate an understanding of the use of documentary credits, the mechanisms governing them and the rules to which documentary credits are subjected;
- 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;
- demonstrate an understanding of the role of the Reserve Bank in regulating the South African financial sector, and the tools available to the bank in undertaking its work.

TEACHING METHODS

Teaching will take the form of formal lectures delivered online (unless a relaxation of pandemic restrictions allows on-campus lectures). Students will be responsible for reading the relevant source material to which they will be referred in lectures and for completing any tasks assigned. Pre-reading ahead of lectures is recommended so as to facilitate better understanding of concepts. For discussions, tests and examinations, practical examples and cases will be used as the basis of learning the principles of law in question.

COURSE CONTENT

1. Origin and sources of the law of negotiable instruments

Introduction

The origin of negotiable instruments

Sources of South African law of negotiable instruments

2. Basic concepts, definitions and parties

- Definition of cheques, bills of exchange and promissory notes
- Characteristics of negotiable instruments payable to order or to bearer
Parties to negotiable instruments
- Cambial agreement/obligation

3. Formal requirements An order Unconditional Writing

- A sum certain in money Drawee must be named Drawer's signature
- Date of payment
- Payee must be indicated

4. Elements of liability

- Capacity Issue Delivery Negotiation
- Endorsement Signature Causa

5. Liabilities of parties

- Drawer Acceptor Endorser
- Transferor by delivery

6. Types of Holders

- Holder
- Holder in due course
- Holder for value
- Successor of a holder in due course

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

8. Discharge of a bill

- Payment in due course
- Acceptor becoming holder at maturity

9. Electronic payment mechanisms

- Nature and types of electronic payment systems the need for electronic payment systems

10. The Financial Intelligence Centre Act ('FICA')

- Background and introduction
- The scope and nature of money laundering
- Rules and regulations
- Accountable institutions, offences, penalties
- Identification and verification in business and professional relationships
- The duty to report suspicious activities

11. The Prevention of Organised Crime Act ('POCA')

- Background and introduction, Definition of organised crime, Offences, penalties
- The duty of businesspeople and professionals to assist in combating organised crime

12. Documentary Credits

- The commercial need for documentary credits.
- The Uniform Customs and Practices for documentary credits.
- The independence principle and the principle of strict compliance. Case studies.

13. The role of the Reserve Bank

- The two faces of the Bank – as supervisor of the banking system and as guardian of monetary stability.
- The tools available to the Bank in achieving its mandate.
- The relationship between the Bank and commercial financial institutions.

RESOURCES

There is no prescribed textbook for this course. Students will be referred in lectures to academic articles, reported cases, statutes, and relevant sections of various textbooks which are available in the Law Library. The two most important textbooks to which reference will be made are:

Sharrock, R.; The Law of Banking and Payment in South Africa; Juta; 2016
Malan, F.R.; Malan on Bills of Exchange, Cheques and Promissory Notes (5th ed); LexisNexis;2009

| Specific Outcomes (On completion of this course the student should know:) | Assessment Criteria (What evidence must the student provide to show that they are competent?) | Assessment Tasks (The evidence will be gathered in:) |
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| 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) - assignment (formative) - tests & examination (summative) |
| Be able to identify and distinguish between essential elements of each negotiable instrument | - describe and explain the various negotiable instruments - demonstrate understanding of the interlink between various negotiable instruments | - class discussions & exercises (formative) - assignment (formative) - tests & examination (summative) |
| Evaluate and appreciate the attendant risk of fraud | - compare the negotiable in terms of commercial usage, requirements and limitations | - class discussions & exercises (formative) - assignment (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) - assignment (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) |
| Know when and how documentary credits are used, and be aware of their functions as both payment and financing instruments. | - demonstrate familiarity with the relevant sections of the UCP 600, and be able to apply those rules to problems. | - class discussion & exercises (formative) - tests & examination (summative) |

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| Know how the Reserve Bank fits into the structure of the South African economy, and specifically the role it plays vis-à-vis other financial institutions. | - be able to explain why and how the Reserve Bank takes various actions in 'real world' examples. | - class discussion & exercises (formative) - tests & examination (summative) |
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ASSESSMENT

There will be one assignment, counting 25% of the total course mark, and two online tests, counting 12.5% of the total mark each, which together will comprise the class component of the course and account for 50% of the final mark. The examination will account for the remaining 50%. **Students are warned that it will not be possible to pass the examination without having done the additional reading to which they will be referred in lectures.**

Craig Renaud
February 2021