

COURSE OUTLINE

COM LAW 202

FORMS OF PAYMENT

JULY 2010

OVERVIEW

The core component of the Forms of Payment course is 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 will also be discussed. The course will then look at issues surrounding the Financial Intelligence Centre Act (FICA), particularly measures aimed at the detection and prevention of money laundering. If time permits, there will be a brief overview of the Prevention of Organised Crime Act (POCA) and the obligations which that act imposes on professionals and business people.

LECTURER

The course is lectured by Ms Sharlene Ramlall. Students who wish to meet with Ms Ramlall to discuss any issues arising out of the course are urged to make an appointment with her either at the end of the lecture period or by e-mail at s.ramlall@ru.ac.za

CREDIT VALUE

The credit value of this course is 3.75 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 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;

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;
- 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.

TEACHING METHODS

Teaching will take the form of formal lectures and class discussions. 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

- 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
- 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
- Signer of an aval
- 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
- Express waiver

- Cancellation

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

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, notably but not exclusively those listed below, all of which are available in the Law Library.

- Gibson, J.T.R. 2003. *South African Mercantile and Company Law*. 8th Ed. Juta & Co
- Malan, F.R. & Pretorius, J.T. 2002. *Malan on Bills of Exchange, Cheques and Promissory Notes*. 4th Ed. Butterworths: Durban.
- Nagel, C.J. et al. 2007. *Commercial Law*. 3rd Ed. Butterworths: Durban

Statutes

- Bills of Exchange Act 34 of 1964 (available in Malan *et al*)
- The Banks Act 94 of 1990
- The Financial Intelligence Centre Act 38 of 2001
- The Prevention of Organised Crime Act 121 of 1998

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:)
Know and understand the function, sources and legal principles of negotiable instruments	<ul style="list-style-type: none"> - demonstrate an appreciation of the content and nature of negotiable instruments - apply statutory and common law principles 	<ul style="list-style-type: none"> - class discussion & exercises (formative) - tests & examination (summative)
Be able to identify and distinguish between essential elements of each negotiable instrument	<ul style="list-style-type: none"> - describe and explain the various negotiable instruments - demonstrate understanding of the interlink between various negotiable instruments 	<ul style="list-style-type: none"> - class discussions & exercises (formative) - tests & examination (summative)
Evaluate and appreciate the attendant risk of fraud	<ul style="list-style-type: none"> - compare the negotiable in terms of commercial usage, requirements and limitations 	<ul style="list-style-type: none"> - class discussions & exercises (formative) - tests & examination (summative)
Know the rights and duties of parties to the various negotiable instruments	<ul style="list-style-type: none"> - be able to apply legal principles of negotiable instruments to different situations 	<ul style="list-style-type: none"> - class discussion & exercises (formative) - tests & examination (summative)
Know the rights and duties of the public, professionals and businesspeople under FICA, and the penalties for non-compliance	<ul style="list-style-type: none"> -be able to identify and apply the law on the detection and prevention of money laundering to practical situations 	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> -be able to identify and apply the law on the detection and prevention of organised criminal activities to practical situations 	<ul style="list-style-type: none"> - class discussion & exercises (formative) - tests & examination (summative)

ASSESSMENT

There will be one compulsory test which will comprise the class component of the course and account for 30% of the final mark. The examination will account for the remaining 70%. **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.** The class component will constitute the DP requirement of the course.