

# Tutorial Letter 101/3/2018

**Commercial Law 2B**

**CLA2602**

**Semesters 1 & 2**

**Department of Mercantile Law**

**IMPORTANT INFORMATION**

This tutorial letter contains important information about your module.

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## 1 INTRODUCTION

Dear Student

Welcome to the module **Commercial Law 2B** (CLA2602).

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter (**CLA2602/101/2018**) contains important information **about the scheme of work, resources and assignments for this module**. We urge you to read it carefully and to keep it at hand when working through the study material; preparing the assignments; preparing for the examination, and addressing questions to your lecturers.

Please read Tutorial Letter 301 in combination with this tutorial letter as it gives you an idea of generally important information when studying at a distance and within a particular College.

In this tutorial letter, you will find the assignments as well as instructions on the preparation and submission of the assignments. This tutorial letter also provides all the information you need with regard to the prescribed study material and other resources and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully. However, for further information on *myUnisa* and other administrative information, please consult the publication *myStudies@Unisa* for more information about *myUnisa* and other administrative matters.

### 1.1 Getting started ...

Right from the start we would like to point out that you must read all the tutorial letters you receive during the semester immediately and carefully, as they always contain important and, sometimes, urgent information.

This module is offered through a blended mode of tuition and learning. Study materials are available both online and through printed material. Printed study materials will be couriered to your designated address, following your registration. You can also read about the module and find your study material online. Go to the website at <https://my.unisa.ac.za> and log in using your student number and password on *myUnisa*. You will see module sites-18-S1/S2 in the row of modules displayed in the orange blocks at the top of the webpage. Select the **More** tab if you cannot find the module you require in the orange blocks. Then click on the module you want to open.

You will receive this tutorial letter and a printed copy of the online study material for your module. While the printed material may appear different from the online study material, it is the same, as it has been copied from the *myUnisa* website.

After registration, you will receive the following study material via post or courier (recommended option):

- One study guide.
- Tutorial Letters.

You are encouraged to register on *myUnisa* tool that will enable you to “chat” to your lecturers and fellow students in online discussion forums, submit assignments, access library resources and download study material. You can access *myUnisa* on <http://my.unisa.ac.za>.

We wish you much success in your studies!

We now proceed to explain the content of the tutorial letters you will receive and the topics you will have to study in this module.

## 1.2 Tutorial letters

Apart from tutorial letters 101 and 301, the tutorial letters that you will receive are the following:

- **Tutorial Letter 102:** this tutorial letter contains the names and contact details of your lecturers and the corresponding page numbers of the content to be studied in your prescribed textbook for each study unit mentioned in your study guide.
- **Tutorial Letter 103:** which contains information about the discussion classes (in the event that discussions classes are hosted).
- **Tutorial Letter 201:** This contains the commentary to the assignments.

Some of your study material may not be available when you register. Tutorial matter that is not available when you register will be posted to you as soon as possible, but is also available on *myUnisa*.

If you have access to the Internet, you can view the study guides and tutorial letters for the modules for which you are registered on the University’s online campus, *myUnisa*, at <http://my.unisa.ac.za>.

## 1.3 Study guide and the prescribed textbook

The prescribed textbook for this module is the **8th edition** of the textbook (see more details in 4.1 below). Take note that the study guide refers to paragraphs in the **7th edition** of the textbook. If you are already in possession of the **7th edition**, you may still use it. **Please consult tutorial letter 102**, which provides the paragraph numbers for the **8th edition** that correspond with those of the **7th edition** quoted in the study guide.

The content of this module is divided as follows:

## **SECTION A: NEGOTIABLE INSTRUMENTS**

- UNIT 1: Negotiable instruments and an introduction to other methods of payment
- UNIT 2: Cheques: definition, parties, relationships and essential elements
- UNIT 3: Who can claim payment on a cheque?
- UNIT 4: Signatures
- UNIT 5: Delivery
- UNIT 6: The liability of the drawer and indorser on a cheque and discharge of the obligation to pay a cheque
- UNIT 7: The nature of the relationship between the drawee bank and the drawer and the different markings on a cheque
- UNIT 8: The protection of the drawee bank
- UNIT 9: The liability of the collecting bank

## **SECTION B: OTHER METHODS OF PAYMENT**

- UNIT 1: Credit cards
- UNIT 2: Traveller's cheques, stop orders and debit orders
- UNIT 3: Letters of credit
- UNIT 4: Electronic funds transfer

## **SECTION C: THE LAW OF TRUSTS**

- UNIT 1: The creation of a trust
- UNIT 2: The office of trustee
- UNIT 3: The administration of a trust
- UNIT 4: The trust beneficiaries and the revocation, variation and termination of a trust

## SECTION D: THE LAW OF INSOLVENCY

- UNIT 1: Voluntary surrender and compulsory sequestration
- UNIT 2: The effect of sequestration on the person and property of the insolvent and uncompleted contracts
- UNIT 3: The effect of sequestration on the property of the solvent spouse
- UNIT 4: Impeachable dispositions
- UNIT 5: Administration of the insolvent estate
- UNIT 6: Composition and rehabilitation
- UNIT 7: The winding-up of companies and close corporations

## SECTION E: THE LAW OF ADMINISTRATION OF ESTATES

- UNIT 1: The master and the executor
- UNIT 2: The rights, powers and duties of the executor
- UNIT 3: The removal/discharge of the executor and the administration of special types of estates.

## 2 OVERVIEW OF CLA2602

### 2.1 Purpose

Students, who have completed this module successfully, will be able to generally apply and develop knowledge and competencies in the workplace and other contexts. In this module students will study different areas of law, namely negotiable instruments and other methods of payment, trusts, insolvency and administration of estates. You are expected to study the information in the study guide and the textbook by referring to the study objectives in the study guide.

This module is delivered using *myUnisa* and the internet as well as peer group interaction; community engagement is also included in some of the activities. Your lecturers will interact with you on *myUnisa* and via e-mail.

### 2.2 Outcomes

For this module, you will have to master several outcomes. The outcomes for this module are divided into five sections as follows:

- The study units in **Section A** deals with the law of negotiable instruments and provides you with a general overview of the concepts and relationships involved in the payments through cheques. They also discuss the different types of claims and liabilities of the parties arising from payment using a cheque.
- **Section B** exposes you to a number of methods of payment that are used in business environment such as credit cards, travellers cheques, debit and stop orders, documentary letters of credit and electronic funds transfers.

- **Section C** provides you with a broad overview of the law of trusts.
- **Section D** focuses on the law of insolvency, with specific focus on the types of sequestration, the effect of sequestration, impeachable dispositions and winding-up of companies.
- **Section E** discusses the rules regarding the administration of deceased estates, including the parties and the processes involved in the liquidation of the deceased estate.

### 3 LECTURER(S) AND CONTACT DETAILS

#### 3.1 Lecturer(s)

Your Lecturers for CLA2602 are as follows:

**Adv. MD Tuba (module leader)**

Building and office number: Cas van Vuuren Building; 6-68

E-mail address: tubamd@unisa.ac.za

Telephone number: (012) 429 8448

**Ms. ML Selemale**

Building and office number: Cas van Vuuren Building; 6-94

E-mail address: selemml@unisa.ac.za

Telephone number: (012) 429 8609

**Ms. AI Leonard**

Building and office number: Cas van Vuuren Building; 6-69

E-mail address: leonaai@unisa.ac.za

Telephone number: (012) 429 8473

**Mrs MM Fuchs (second semester)**

Building and office number: Cas van Vuuren Building; 4-109

E-mail address: fuchsmm@unisa.ac.za

Telephone number: (012) 429 4742

**Mr MP Makakaba**

Building and office number: Cas van Vuuren Building; 6-70

E-mail address: makakamp@unisa.ac.za

Telephone number: (012) 429 8567

You can also write to us.

Letters should be sent to:  
The Module Co-ordinator (CLA2602)  
Department of Mercantile Law  
PO Box 392  
UNISA  
0003

**PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.**

### **3.2 Department**

You can contact the Department of Mercantile law on: (+2712) 429 8460.

### **3.3 University**

To contact the University follow the instructions in the brochure **Study@Unisa**. Remember to have your student number available whenever you contact the University.

Whenever you write to a lecturer, please include your student number to enable the lecturer to help you more effectively.

## **4 RESOURCES**

### **4.1 Prescribed book**

The prescribed textbook is **General Principles of Commercial Law** 8th edition (2014) Juta. The prescribed book is co-authored by Kelbrick R, Schulze H (General Editor), Churr C, Hurter E, Manamela E, Manamela T, Masuku B and Stoop P.

Please note: the study guide was written before the 2014 edition was made available. Consequently, you have to use tutorial letter 102 together with your study guide to obtain the correct page references for the 8th edition.

Prescribed books can be obtained from the University's official booksellers. Their names are provided in *Study @ Unisa*. If you have difficulty locating your book(s) at these booksellers, please contact the Prescribed Books Section at +2712 429 4152 or e-mail [vospresc@unisa.ac.za](mailto:vospresc@unisa.ac.za).

### **4.2 Recommended books**

There are no recommended books for this module.

### **4.3 Electronic reserves (e-eserves)**

There are no e-Reserves for this module.



#### 4.4 Joining *myUnisa*

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The *myUnisa* learning management system is the University's online campus that will help you communicate with your lecturers, with other students and with the administrative departments at Unisa – all through the computer and the internet.

You can start at the main Unisa website at <http://www.unisa.ac.za> and then click on the *myUnisa* orange block. This will take you to the *myUnisa* website. To go to the *myUnisa* website directly, go to <https://my.unisa.ac.za>. Click on the **Claim UNISA Login** on the right-hand side of the screen on the *myUnisa* website. You will then be prompted to give your student number in order to claim your initial *myUnisa* details as well as your *myLife* e-mail login details.

For more information on *myUnisa*, consult the brochure **Study@Unisa**, which you received with your study material.

#### 4.5 Discussion classes (if available)

Please ensure that you attend one of the group discussion classes, which may be presented in both the first, and the second semesters of this year (the time, date and venue of each will be confirmed in Tutorial Letter 103 that will follow in due course). This is one of the few opportunities where you can address your questions to one of the lecturers responsible for this course.

We suggest that you participate in the class so that you will leave with a better understanding of the work. Regard this class as an opportunity to assess what you know (and do not know). This will provide an indication of how much time and effort you still need to devote to this section on the module.

#### 4.6 E-tutor support

This module qualifies as a module that can offer online tutorials (e-tutoring). You will receive notification from your lecturers if e-tutoring is available for a specific semester.

In the event that e-tutoring is offered there will be a specific process you need to follow. Once you have registered for this module you may be allocated to a group of students with whom you will be interacting during the tuition period as well as an e-tutor who will be your tutorial facilitator. Thereafter you will receive an sms informing you about your group allocation, the name of your e-tutor and instructions on how to log onto *myUnisa* in order to receive further information on the e-tutoring process. Even though e-tutoring is offered free of charge, you will need a computer with internet connection to be able to participate. If you live close to a Unisa regional Centre or a Telecentre contracted with Unisa, please feel free to visit any of these to access the internet. E-tutoring takes place on *myUnisa* where you are expected to connect with other students in your allocated group.

#### 4.7 SMS

Please ensure that you have provided the University with your correct cellphone number(s) because important information such as reminders about videoconference classes are sent to students by SMS.

## 4.8 Library services and resource information

Although the study for this module is limited to the information in the study guide and the prescribed textbook, you may need to consult extra materials which may help you to understand the contents of this module much better. Materials are also available on the following Unisa websites:

For brief information, go to [www.unisa.ac.za/brochures/studies](http://www.unisa.ac.za/brochures/studies).

For detailed information, go to <http://www.unisa.ac.za/library>. For research support and services of personal librarians, click on "Research support".

The Library has compiled numerous library guides:

- finding recommended reading in the print collection and e-reserves – <http://libguides.unisa.ac.za/request/undergrad>
- requesting material – <http://libguides.unisa.ac.za/request/request>
- postgraduate information services – <http://libguides.unisa.ac.za/request/postgrad>
- finding, obtaining and using library resources and tools to assist in research – [http://libguides.unisa.ac.za/Research\\_Skills](http://libguides.unisa.ac.za/Research_Skills)
- contacting the Library/finding us on social media/frequently asked questions – <http://libguides.unisa.ac.za/ask>

## 5 ASSESSMENT

### 5.1 Assessment criteria

Students should be able to explain, and describe the basic principles relating to the law of negotiable instruments, methods of payments, the law of trust and administration of estate as well as the law of insolvency. They are also expected to apply these principles to a factual scenario in a summative assessment to solve factual problems.

### 5.2 Assessment plan

The University now requires that all students should complete **two** compulsory assignments in each module for evaluation. Both assignments must be submitted, namely **assignment 01**, and **assignment 02**. The first assignment is the only assignment that gives admission to the examination while the second assignment is compulsory in the sense that it counts towards the year mark.

We repeat: There are thus two assignments for semester 1, **namely assignment 01 and assignment 02**, and two assignments for semester 2, **namely assignment 01 and assignment 02**. **Both assignments for a semester must be submitted.**

Students registered for this module will be assessed through both formative and summative assessments which will be conducted within the guideline of the Unis Assessment Policy.

### 5.3 Year mark and final examination/portfolio

Your year mark for this module is as follows:

- The formative assessment consists of **two compulsory assignments**. Each assignment will contribute 50% towards the year mark. The two assignments combined will yield the year mark, which contributes **20% towards the final mark**.
- The summative assessment consists of a **two hour examination**. The examination mark will contribute **80% towards the final mark**.
- A **sub-minimum of 40%** is required in the examination in order for the year mark to be taken into account.

**The year mark counts 20% of the final mark, while the exam mark counts 80%. The 20% year mark will be calculated by taking the marks for both assignment 01 and 02 into consideration.**

Thus, although it is not compulsory to submit assignment 02 to gain admission to the examination, we strongly urge you to submit it as each assignment contributes to the final mark.

### 5.4 Assignment due dates and unique numbers

There are two assignments for each semester that must be completed. Each of the two assignments consists of ten multiple-choice questions that must be submitted electronically on *myUnisa*.

Each assignment is allocated a unique number specific to that assignment. When submitting the assignment, you must state the unique assignment number allocated to the assignment as indicated below.

Please remember to allocate the same unique number to the assignment as the one given in the tutorial letter. Remember that your first assignment must be numbered 01 and your second assignment must be numbered 02.

The assignments for the first and second semester are included in the addendum at the end of this tutorial letter.

#### FIRST SEMESTER: 2018

Assignment numbers	Due dates	Unique numbers
Assignment 01	2018-03-26	895717
Assignment 02	2018-04-23	695935

#### SECOND SEMESTER: 2018

Assignment numbers	Due dates	Unique numbers
Assignment 01	2018-08-24	808885
Assignment 02	2018-09-25	804690

#### 5.5 Submission of assignments

Your assignments must reach us on or before the submission date. You may submit your assignments either by post or electronically via *myUnisa*. **It is recommended that you submit your assignment electronically via *myUnisa*, as it is the more reliable form of submission.** Assignments may not be submitted by fax or e-mail.

Remember that your assignment must have precisely the same number as that given in this tutorial letter. No marks will be awarded for the wrong assignment. For detailed information and requirements as far as assignments are concerned, see the publication *Study @ Unisa* which you received with your study material.

To submit an assignment via *myUnisa*

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

Please take note of the following:

- Remember that your first assignment must be numbered 01 and your second assignment must be numbered 02. Each of these assignments must be allocated their respective unique numbers.
- Please ensure that your name, address, student number, module code, assignment number and unique number for the assignment appear on the mark reading sheet, and that this information is correct.
- It is wise to make copies of assignments before submitting them, in case they get lost in the post.
- Do not submit the same assignment a second time. The computer will simply reject it as a duplicate assignment.

**PLEASE NOTE:** Each year a number of students submit faulty mark-reading sheets which cannot be processed by the computer. Sheets that are rejected by the computer are returned to students without being marked.

## 5.6 The assignments

### 5.6.1 Assignments and studies

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

### 5.6.2 Commentary and feedback on assignments

The commentaries on the compulsory assignments will be sent to all students registered for this module in a follow-up Tutorial letter 201, and not only to those students who submitted the assignments.

As soon as you have received the commentaries, please compare it to your answers. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

### 5.6.3 Assessment of assignments

#### PLEASE NOTE:

Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

## 5.7 The examination

Use your *Study @ Unisa* brochure for general examination guidelines and examination preparation guidelines.

### 5.7.1 Examination admission

Please note that you must submit assignment 01 (for the semester in which you are registered) on or before the due dates indicated in order to gain admission to the examination.

Please note that a pass mark for assignment 01 is not required in order to gain admission to the examination. Students who have submitted assignment 01, but who failed may still write the examination.

### 5.7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in **May/June 2018** and the supplementary examination will be written in **October/November 2018**. If you are registered for the second semester you will write the examination in **October/November 2018** and the supplementary examination will be written in **May/June 2019**.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

### 5.7.3 Examination paper

You will write one **two-hour** paper. The paper counts **100 marks**. You will receive more information regarding the format and mark allocation of the paper in future tutorial letters.

#### 5.7.4 Calculation of your final mark

Your year mark, based on the average mark obtained for the compulsory assignments, contributes 20% toward your final mark, while your examination mark contributes 80%.

**Please note that if a student is awarded less than 40% in the examination, the year mark will not count.**

The combined weighted average of your year mark and examination mark must be 50% or higher for you to pass the module/subject.

#### **For example:**

If you receive 60% for assignment 01 and 80% for assignment 02, your year mark will be 70% (meaning  $(60+80)/2$ ).

Year mark=70%

20% of the assignment mark = 14%

Examination mark = 50%

80% of the examination mark = 40%

Final mark = (20% year mark) + (80% examination mark)

= 14% + 40%

= 54%

## 6 FREQUENTLY ASKED QUESTIONS

The *Study @ Unisa* brochure contains an A-Z guide of the most relevant study information.

## 7 SOURCES CONSULTED

There are no additional sources consulted for this module.

## 8 CONCLUSION

Experience has shown that students, who begin their studies immediately after obtaining study materials, stand good chances of obtaining high marks for both their assignments and their final examinations. You are therefore encouraged to start planning your studies as soon as possible after you received your study materials. You are also encouraged to attempt practical activities provided in the study guide. Keep in mind that you can contact us regarding any questions on the content of this tutorial letter or the content of this module.

Do not hesitate to contact us by e-mail if you are experiencing problems with the content of this tutorial letter or with any academic aspect of the module.

We wish you a fascinating and satisfying journey through the learning material and trust that you will complete the module successfully.

Enjoy the journey!

Your lecturers for CLA2602

**DEPARTMENT OF MERCANTILE LAW**



## 9 ADDENDUM

### FIRST SEMESTER

<b>ASSIGNMENT 01: DUE DATE: 2018-03-26</b>	<b>UNIQUE NO: 895717</b>
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#### QUESTION 1

Which **ONE** of the following does **NOT** qualify as a negotiable instrument?

1. A credit card.
2. A promissory note.
3. A cheque.
4. A bill of exchange.

#### QUESTION 2

Phil draws a cheque on Ubuntu Bank in favour of Lesego.

Which **ONE** of the following statements is **CORRECT**?

1. Lesego is the drawer, Ubuntu Bank is the payee and Phil is the drawee.
2. Phil is the drawer, Ubuntu Bank is the drawee and Lesego is the payee.
3. Lesego is the payee, Ubuntu Bank is the drawer and Phil is the drawee.
4. Phil is the drawer, Ubuntu Bank is the payer and Lesego is the drawee.

#### QUESTION 3

Which **ONE** of the following definitions of a cheque is **INCORRECT**?

- (a) An unconditional order in writing, addressed by one person to a bank, signed by the person giving it, requiring the bank to whom it is addressed to pay on demand or at a fixed or determinable future time, a sum certain in money to a specified person or his/her order, or to bearer.
- (b) A bill drawn on a bank payable on demand.
- (c) An unconditional order in writing, addressed by one person to a bank, signed by the person giving it, requiring the bank to whom it is addressed to pay on demand, a sum certain in money to a specified person or his/her order, or to bearer.
- (d) A bill drawn on a bank payable at a determinable future time.

Choose the **MOST CORRECT** answer from following combinations:

1. Only (a) and (d).
2. Only (b) and (d).
3. Only (b), (c) and (d).
4. Only (c) and (d).

#### QUESTION 4

Which **ONE** of the options listed below, **CORRECTLY** completes the following statement:

If the payee of an order cheque is a fictitious person, the cheque may be treated as a/an...

1. bearer cheque.
2. order cheque.
3. non transferable cheques.
4. not negotiable cheque.

#### QUESTION 5

Which **ONE** of the following statements regarding the functions of the minor's signatures on a cheque is **CORRECT**?

1. The minor endorser's signature does not fulfil a transfer function.
2. The minor drawer's signature fulfils a constitutive and a guarantee function.
3. The minor drawer's signature fulfils a constitutive or transfer function.
4. A minor should always add the words "*sans recours*" to a cheque to enjoy the protection of the law. This protection is not granted automatically.

#### QUESTION 6

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Kgang draws a cheque on United Bank in favour of "Dintwa or order" and delivers it to Dintwa. Dintwa endorses this cheque in favour of "Sediba" and delivers it to Sediba. The delivery of the cheque from Kgang to Dintwa is called ...

1. negotiation.
2. issue.
3. endorsement.
4. acceptance.

#### QUESTION 7

With reference to the scenario in **QUESTION 6** above, the delivery of the cheque by Dintwa to Sediba is called...

1. transfer.
2. negotiation.
3. endorsement.
4. issue.

**QUESTION 8**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Tau draws a cheque on Leba Bank in favour of “Maphuti or order” and delivers it to Maphuti. When Maphuti is in possession of this cheque, he is ...

1. The possessor and the holder of the cheque.
2. the holder and the holder in due course of the cheque.
3. the possessor and the holder in due course.
4. only the possessor of the cheque.

**QUESTION 9**

Which of the following options listed below is **NOT** a type of indorsement?

1. A simple indorsement.
2. An indorsement in blank.
3. A special endorsement.
4. A restrictive indorsement.

**QUESTION 10**

Which of the following statements are examples of a general crossing?

- (a) Two parallel transverse lines across the face of the cheque.
- (b) A cheque which bears boldly across its face the words “non-transferable” without the name of the bank.
- (c) Two parallel transverse lines with the name of the bank added across the face of the cheque.
- (d) Two parallel transverse lines with the words “not negotiable” written on the face of the cheque.

Choose the **MOST CORRECT** answer from the following:

1. Only (b).
2. Only (b) and (d).
3. Only (a), (b) and (d).
4. Only (c) and (d).

**TOTAL: 10 MARKS**

**QUESTION 1**

Which **ONE** of the following statements regarding the differences between stop order and debit order is **CORRECT**.

1. The debit order is a mandate from the account holder to his bank to pay a sum of money from his account.
2. The stop order can only be used to provide a deduction of a fixed amount from the account of the debtor. The debit order, in contrast, may provide for a varying amount to be deducted from the account of the debtor.
3. The debit order is never given to the creditor while the stop order is handed over to the creditor and the duty to request punctual payment rests on the creditor.
4. The stop order is not only a mandate to the bank to pay but also an authorisation to the creditor to request payment from the bank.

**QUESTION 2**

Which **ONE** of the following methods of payment is suitable to effect payment in the case of an international contract of purchase and sale, because it protects the interests of both the exporter and the importer?

1. Debit order.
2. Stop order.
3. Credit card.
4. Letter of credit.

**QUESTION 3**

Kgothatso's credit card is stolen and he immediately notifies the card issuer, Batho Bank of the loss. After Batho Bank has notified various suppliers of the stolen card (including PPP Stores), PPP Stores accept the credit card as payment for goods purchased by the thief. The relationship between Kgothatso, Batho Bank and PPP Stores is governed by a standard contract.

Who bears the loss incurred when the thief purchased goods at PPP Stores with Kgothatso's credit card?

1. Kgothatso.
2. Kgothatso and PPP Stores.
3. PPP Stores.
4. Batho Bank.

**QUESTION 4**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

A power that is conferred upon the trustee of a trust to appoint another trustee to fill a vacancy in office is referred to as ...

1. power of attorney.
2. power of subrogation.
3. power of assumption.
4. power of security.

**QUESTION 5**

Which **ONE** of the following acts would be regarded as an act of insolvency?

1. The debtor leaves the country to visit his sister in England, without paying his accounts which are account due.
2. The sheriff declares in his return that he could not find any disposable property of the debtor to satisfy a judgment.
3. The debtor indicates to one of his creditors that his liabilities do indeed exceed his assets.
4. The debtor advertises his property for sale at a price, which is only about 60 percent of its real market value.

**QUESTION 6**

Which of the following statements regarding the effects of sequestration on the person and property of the insolvent and on uncompleted contracts is **INCORRECT**?

- (a) Where the lessor's estate is sequestrated, the lessee of immovable property enjoys limited protection because of the common law rule of "huur gaat voor koop". This means that the trustee has to sell the property subject to the lease.
- (b) A contract of mandate where the insolvent is the mandator lapses automatically on sequestration but this is not necessarily the case with contracts of employment where the insolvent is the employer.
- (c) The insolvent may not dispose of any property of the estate and only requires the written consent of the trustee where he intends to contribute to the insolvent estate.
- (d) The insolvent may only be appointed as a director of a company if he is authorised thereto by the court.

Choose the **CORRECT** answer from following combinations:

1. (a) and (b).
2. (b) and (c).
3. (c) and (d).
3. (a), (b) and (d).

### QUESTION 7

Which **ONE** of the following statements regarding sequestration on property of the solvent spouse is **INCORRECT**?

1. The assets of a solvent spouse carrying on a business shall vest in the Master or trustee automatically upon the sequestration of the insolvent spouse's estate.
2. Property that belonged to the solvent spouse immediately before the marriage is typically a category of property that has to be released by the trustee of the estate of the insolvent spouse.
3. The trustee has to sell the property of the solvent spouse not released by him (the trustee) but the proceeds must be used to pay the creditors of the solvent spouse first.
4. A spouse may, during the course of the marriage, acquire property by donation, for example, which will give him or her valid title against the creditors of the insolvent spouse.

### QUESTION 8

Which **ONE** of the following statements regarding the removal/discharge of the executor and the administration of special types of estates is **CORRECT**?

1. The court can remove an executor from office if he is a party to an agreement whereby he undertakes, in his capacity as an executor, to grant an heir a benefit to which he is not entitled.
2. The court can remove an executor from office if he is a minor at the time of his appointment.
3. The court can remove an executor from office if he has been appointed as an executor dative and it later appears that an executor testamentary has been nominated.
4. The heirs can remove an executor from office if he fails to draw up and lodge the liquidation and distribution account.

### QUESTION 9

Which **ONE** of the following statements concerning the duties of the executor is **CORRECT**?

1. The executor must always open a banking account in the name of the estate.
2. The executor of a deceased estate may pay the creditors of the estate before the Master's approval of the liquidation and distribution account.
3. The executor's inventory of a deceased estate must be submitted to the Master within 30 days of the death of the owner of that estate.
4. The duties of the executor arise from the moment that the executor is nominated in the will of the testator.

**QUESTION 10**

Which **ONE** of the following statements regarding the Master of High Court is **INCORRECT**?

1. A Master of the High Court may not be appointed as Master for more than one division of High Court.
2. A Master of the High Court may be appointed as Master for more than one High Court.
3. The Master of the High Court in the area where the deceased was ordinarily resident before his/ her death has jurisdiction over the estate.
4. A Master of the High Court is appointed for the area of jurisdiction of each High Court in South Africa.

**TOTAL: 10 MARKS**

## SECOND SEMESTER

ASSIGNMENT 01: DUE DATE: 2018-08-24

UNIQUE NO: 808885

### QUESTION 1

Which **ONE** of the following is **NOT** a type of endorsement of a cheque?

1. An indorsement in blank.
2. A special indorsement.
3. A general indorsement.
4. A restrictive indorsement.

### QUESTION 2

Examine the following sample of a cheque and answer the question that follow.

<b>IMALI BANK LTD</b> <b>No 97 Winter St Pretoria 0001</b>	<i>Date 17 October 2018</i>
<b>Pay Jopie Thomas</b>	
The sum of <b>FIVE THOUSAND RAND ONLY</b>	<b>R5000</b>
	<i>Lesego Selemale</i>

Which of the following are **NOT** essential elements of a cheque?

Choose the **MOST CORRECT** answer from the following:

1. The date and place of payment.
2. The order to pay and the sum in money payable.
3. The place of payment, the drawer's signature, and the sum in cash payable.
4. The order to pay, the drawer's signature, and the sum in cash payable.

### QUESTION 3

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?  
Hu draws a cheque on Imali Bank in favour of "Bokang" and delivers it to Bokang.

When Bokang is in possession of this cheque, she is ...

1. only the possessor of the cheque.
2. only the holder in due course of the cheque.
3. the possessor and the holder of the cheque.
4. the holder and the holder in due course of the cheque.



**QUESTION 4**

Cilly draws a cheque on Imali Bank in favour of “Billy or order” and delivers it to Billy. Billy indorses the cheque to Lesego who, in turn, indorses the cheque to Zama.

Choose the **MOST CORRECT** answer that completes the following statement:

By indorsing the cheque Lesego guarantees to Zama, a holder in due course that ...

1. Cilly exists.
2. Cilly’s and Billy’s signatures are genuine.
3. Billy has the necessary capacity to indorse the document.
4. 1 and 2 above.

**QUESTION 5**

A signature on a cheque can fulfil certain function/s.

Choose the **MOST CORRECT** answer from the followings:

1. Constitutive function.
2. Constitutional function, referral function and transfer function.
3. Referral function.
4. Transfer function, constitutive function and guarantee function.

**QUESTION 6**

Which of the followings are three essential parties to a cheque?

1. Endorser, drawer and payee.
2. Payer, endorsee and drawee.
3. Drawer, drawee and payee.
4. Holder in due course, endorser and Payee.

**QUESTION 7**

Which **ONE** of the following statements is **NOT** one of the requirements that must be complied with in order for the drawee bank to obtain the protection afforded under section 58 of the Bills of Exchange Act 34 of 1964?

1. The order cheque can be crossed or uncrossed.
2. The drawee bank must pay according to the crossing on the cheque in good faith and without negligence.
3. The cheque must contain a forged indorsement.
4. The drawee bank must pay in good faith and in the ordinary course of business.

## QUESTION 8

Which of the followings is/are the type/s of crossing/s that can be placed on a cheque?  
Choose the **MOST CORRECT** answer:

1. Simple crossing.
2. General crossing.
3. Special crossing.
4. Option 2 and option 3.

## QUESTION 9

Maphuti draws a cheque on Cash Bank in favour of "Phillip or order" and delivers the cheque Phillip. A thief steals a cheque from Phillip, forges Phillip's signature on the back of the cheque and delivers it to Lesego. Lesego changes the forged endorsement to an indorsement in her name, signs the cheque and delivers it to Ben.

Which **ONE** or **MORE** of the following statement(s) is/are **CORRECT** regarding the rights of the parties on the cheque in the scenario above?

- (i) The cheque is generally wholly inoperative and no title in respect of the cheque is transferred to Lesego or Ben.
- (ii) Ben is the "holder in due course" and may claim payment from Maphuti, Cash Bank or Phillip in terms of section 53(2)(b) of the Bills of Exchange act 34 of 1964.
- (iii) Lesego may be precluded from denying the genuineness and regularity of the drawer's signature and all previous endorsements in terms of section 53(2)(b) of the Bills of Exchange Act 34 of 1964.
- (iv) Ben may claim payment of the cheque from Cash Bank in terms of section 53(2)(b) of the Bills of Exchange Act 34 of 1964.

Choose the **MOST CORRECT** answer from the following:

1. Only (i).
2. Only (i) and (iii).
3. Only (i), (ii) and (iv).
4. All of the above.

## QUESTION 10

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Lesego draws a cheque on Imali Bank in favour of "Siya" and delivers it to him (Siya). Siya endorses the cheque in favour of "Lentu" and delivers it to her (Lentu). The endorsement and delivery of the cheque by Siya to Lentu is called...

1. Negotiation.
2. Issue.
3. Endorsement.
4. Acceptance.

**TOTAL: 10 MARKS**

**ASSIGNMENT 02: DUE DATE: 2018-09-25****UNIQUE NO: 804690****QUESTION 1**

Which **ONE** of the options listed below **CORRECTLY** completes the following statement?

Lesego draws a cheque on Imali Bank in favour of "Siya or bearer" and delivers it to him (Siya). Before delivering the cheque to Siya, Lesego also draws two parallel transverse lines on the face of the cheque.

This is a/an...

1. order cheque.
2. bearer cheque.
3. non – transferable cheque.
4. non – negotiable cheque.

**QUESTION 2**

On 17 October 2017 an agreement was concluded by five founders, namely V,W, X Y and Z. The agreement constituted a trust called the Missing Middle Educational Organisation ("MMEO"). In terms of clause 4 of the agreement, the objects of the trust were "to create a fund to provide for varsity fees for middle class students whose parents cannot afford varsity fees and who cannot access government funding".

Choose the **MOST CORRECT** answer from the following:

1. MMEO was created by concluding a contract for the benefit of a third party.
2. MMEO is a trust mortis causa.
3. MMEO is a trust inter vivos.
4. 1 and 3.

**QUESTION 3**

Which **ONE** of the following is **NOT** an essential requirement for the creation of a valid trust?

1. The founder must intend to create a trust.
2. The trust object must be lawful.
3. The trust property must be transferred to the trustee.
4. Trust property must be defined with reasonable clarity.

#### QUESTION 4

Siphiwe wants to purchase a house. She successfully applied for a mortgage bond at Imali Bank. Siphiwe is subsequently declared insolvent.

Which **ONE** of the following categories of creditors will Imali Bank fall under?

1. Unsecured creditor.
2. Preferential creditor.
3. Secured creditor.
4. Concurrent creditor.

#### QUESTION 5

Steve's creditors apply for the sequestration of his estate on the basis that he committed one of the acts of insolvency.

Which **ONE** of the following does **NOT** constitute an act of insolvency in terms of the Insolvency Act 24 of 1936?

1. Steve decided to stay permanently with his children in Bela-Bela after his creditors persistently demanded repayment of his debts.
2. He called one of his creditors and told him telephonically that he will not be able to pay his debts as he has lost his job.
3. He paid all the money in his bank accounts to one of his creditors.
4. He made an offer to each of his creditors to pay only half of what he owes them and further threatened to surrender his estate if they did not accept his offer.

#### QUESTION 6

Which **ONE** of the following methods of payment is suitable to effect payment in the case of an international contract of purchase and sale, because it protects the interests of both the exporter and the importer?

1. Debit order.
2. Stop order.
3. Credit card.
4. Letter of credit.

#### QUESTION 7

The Administration of Estates Act 66 of 1965 not only provides for the administration of deceased estates, but also for the administration of estates of persons who are unable to exercise control over their own estates.

Which **ONE** of the following persons does **NOT** fall under this category?

1. Pensioners.
2. Minors.
3. Mentally disabled persons.
4. Absent persons.

**QUESTION 8**

The person who is legally entitled to what is left in the deceased estate after the distribution to the legatees is the...

1. legacy.
2. heir.
3. legatee.
4. Master.

**QUESTION 9**

Which **ONE** of the following does the Master **NOT** require before appointing an executor?

1. Death notice.
2. Will, if there is one.
3. Bank statement of potential executor.
4. Bond of security, if security is necessary.

**QUESTION 10**

Which of the following statement(s) is/are **NOT CORRECT** regarding the validity of a redistribution agreement in the case of a deceased estate?

- (i) Each party to the agreement must forfeit something and gain something in return.
- (ii) Each of the parties to the agreement must receive exactly the same value that which he or she has forfeited.
- (iii) The Master must approve the agreement.
- (iv) The redistribution agreement must be registered with the Registrar of Deeds.

Choose the **MOST CORRECT** answer from the following options:

1. Only (ii).
2. (ii) and (iv).
3. (i) and (iii) and (iv).
4. (iii) and (iv).

**TOTAL: 10 MARKS**