

CLA2602

(482066)

October/November 2013
Oktober/November 2013**COMMERCIAL LAW IIB
KOMMERSIELE REG IIB**Duration 2 Hours
Tydsduur 2 Uur100 Marks
100 Punte**EXAMINERS / EKSAMINATORE**

FIRST / EERSTE	MS/ME MM KOEKEMOER
SECOND / TWEEDE	MRS/MEV AN WAGENER

Closed book examination
Toeboekeksamen

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INSTRUCTIONS**INSTRUKSIES:**

1. This paper consists of 25 pages and you have to answer ALL the questions
Die vraestel bestaan uit 25 bladsye en AL die vrae moet beantwoord word.
2. The paper is divided into the following 4 SECTIONS
Die vraestel is ingedeel in die volgende 4 AFDELINGS:
 - SECTION A consists of 10 multiple choice questions (2 marks each). The answers to the multiple choice questions have to be filled in on the mark reading sheet provided to you.
AFDELING A bestaan uit 10 meervuldigekeuse vrae (2 punte elk). Die antwoorde hierop moet aangebring word op die merkleesblad wat vir hierdie doel voorsien is.
 - SECTION B consists of 10 true/false questions (1 mark each) Your answers have to be completed in the space provided on the examination paper itself
AFDELING B bestaan uit 10 waar/vals vrae (1 punt elk). Beantwoord die afdeling se vrae in die spasie soos voorsien in die vraestel self.
 - SECTION C consists of 10 mix and match questions (2 marks each) Your answers have to be completed in the space provided on the examination paper itself.
AFDELING C bestaan uit 10 kies die korrekte stelling vrae (2 punte elk) Beantwoord die afdeling se vrae in die spasie voorsien in die vraestel self.
 - SECTION D consists of 3 questions worth 50 marks in total, and has to be completed in the space provided on the examination paper itself
AFDELING D bestaan uit 3 vrae wat tesame 50 punte werd is. Beantwoord die afdeling se vrae in die spasie voorsien in die vraestel self.

3. At the end of the examination you have to hand in both the mark reading sheet containing your answers to the multiple choice questions as well as this examination paper.
Nadat die toegekende tyd verstreke is vir die eksamenvraestel, moet u beide die merkleesblad, waarop die meervuldigekeuse antwoorde aangebring is, sowel as die eksamenvraestel inhandig.
4. The use of calculator is not permissible
Die gebruik van 'n sakrekenaar is ontoelaatbaar.

SECTION A AFDELING A

Answer the following multiple choice questions using the MARK READING SHEET provided to you
Beantwoord die volgende meervuldigekeuse vrae deur gebruik te maak van die MERKLEESBLAD wat aan u voorsien is.

QUESTION 1

Which **ONE** of the following statements does **NOT** comply as an essential element a document requires in order to be a valid cheque in terms of the Bills of Exchange Act 34 of 1964?

- (1) The wording of the cheque must constitute a request
- (2) It is still regarded as 'unconditional' if the cheque indicates a particular account to be debited with the amount written on the cheque.
- (3) The cheque must be signed by the drawer
- (4) It is still a 'sum certain in money' if it is stated on the cheque that payment must be made with along with interest charged

VRAAG 1

Welke **EEN** van die volgende stellings sal **NIE** gereken word as 'n wesenlike kenmerk waaraan dokument moet voldoen om 'n tjek te wees in gevolge die Wisselwet 34 van 1964?

- (1) Die bewoording van die tjek, moet 'n versoek daar stel.
- (2) Dit word nog steeds beskou as 'onvoorwaardelik' indien die tjek dui op 'n spesifieke rekening wat gedebiteer moet word met die bedrag geskryf op die tjek.
- (3) Die tjek moet geteken word deur die trekker.
- (4) Dit kwalifiseer steeds as 'n 'vasgestelde bedrag geld' indien dit op die tjek aangedui is dat die betaling gemaak moet, ingesluit die rente daarop gehef.

QUESTION 2

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

Which **ONE** or **MORE** of the following statements is **CORRECT** regarding the rights of the parties on the cheque in the above scenario?

- (i) The cheque is generally wholly inoperative and no title in respect of the cheque is transferred to Phil or Ben
- (ii) Ben is the 'holder in due course' and may claim payment of the cheque from Maphuti, Cash Bank or Philile in terms of section 53(2)(b) of the Bills of Exchange Act 34 of 1964.
- (iii) Phil may be precluded from raising Ben's defective title as a defence in term of section 53(2)(b) of the Bills of Exchange Act 34 of 1964.
- (iv) Ben may claim payment of the cheque from Phil in terms of the section 53(2)(b) of the Bills of Exchange Act 34 of 1964.

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

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

VRAAG 2

Maphuti trek 'n tjek op Cash Bank ten gunste van ' Philile of order ' en lewer die tjek aan Philile. 'n Dief steel die tjek by Philile, vervals Philile se handtekening op die rugkant van die tjek en lewer dit aan Phil. Phil verander die vervalste endossement na 'n endossement in sy naam, teken die tjek en lewer dit aan Ben.

Welke EEN of MEER van die volgende stelling(s) is KORREK aangaande die regte van die partye op die tjek in bogenoemde feitestel?

- (i) Die tjek in die algemeen is geheel en al kragteloos and geen titel aangaande die tjek is oorgedra aan Phil of Ben nie.**
- (ii) Ben is die reëlmatige houer en mag betaling van die tjek eis van Maphuti, Cash Bank of Philile ingevolge artikel 53(2)(b) van die Wisselwet 34 van 1964.**
- (iii) Phil kan verhinder word ingevolge artikel 53(2)(b) van die Wisselwet 34 van 1964 om die egtheid en reëlmatigheid van die trekker se handtekening en all vorige endossement te ontken.**
- (iv) Ben mag betaling eis op die tjek vanaf Phil ingevolge artikel 53(2)(b) van die Wisselwet 34 van 1964.**

Kies die MEES KORREKTE antwoord uit die volgende:

- (1) Slegs (iv).**
- (2) Slegs (i) en (iii).**
- (3) (i), (ii) en (iv).**
- (4) Al die bogenoemde.**

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QUESTION 3

Which **ONE** of the following defences is **NOT** a relative defence that can be raised against a holder in due course that requests payment on a cheque?

- (1) Lack of contractual capacity.
- (2) Conditional negotiation
- (3) That the underlying obligation is a gambling debt.
- (4) Set-off

VRAAG 3

Welke **EEN** van die volgende verwerre is **NIE** 'n relatiewe verweer wat geopper kan word teen die reëlmatige houer wat betaling op 'n tjek versoek?

- (1) Gebrek aan handelingsbevoegdheid.
- (2) Voorwaardelike verhandeling.
- (3) Dat die onderliggende ooreenkoms weddenskapskuld is.
- (4) Skuldvergelyking.

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QUESTION 4

Which **ONE** of the following statements is **NOT** a requirement that must be complied with in order to afford the true owner with the protection under section 81 of the Bills of Exchange Act 34 of 1964?

- 1) The cheque must be crossed and marked 'not negotiable'
- 2) The cheque must be lost or stolen while crossed and marked 'not negotiable'.
- 3) The bank must have paid so that it cannot be liable to the true owner of the cheque
- 4) The bank must have paid in good faith and within ordinary course of business

VRAAG 4

Welke **EEN** van die volgende stellings is **NIE** 'n vereiste waaraan voldoen moet voordat die ware eienaar die beskerming kragtens artikel 81 van die Wisselwet 34 van 1964 kan ontvang nie?

- (1) Die tjek moet gekruis en gemerk wees 'nie verhandelbaar'.
- (2) Die tjek moet verlore of gesteel word terwyl dit gekruis en gemerk is 'nie verhandelbaar'.
- (3) Die bank moes reeds betaal het sodat dit nie aanspreeklik sal wees teenoor die ware eienaar van die tjek nie.
- (4) Die bank moes betaal het te goeder trou en in die gewone loop van sake.

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QUESTION 5

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

- (1) stop order
- (2) credit card
- (3) travellers' cheque
- (4) documentary letter of credit

VRAAG 5

Welke **EEN** een van die volgende betalingsmetodes is mees geskik om betaling te bewerkstellig in geval van 'n internasionale koopkontrak, omdat dit die belange van die invoerder sowel as die uitvoerder die beste beskerm.

- (1) aftrekorder
- (2) kredietkaart
- (3) reisigerstjek
- (4) dokumentêre kredietbrief

QUESTION 6

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

In an application to have a disposition set aside as an undue preference, the trustee must prove that

- (1) the disposition was not made in the ordinary course of business
- (2) the liabilities in the estate exceeded the assets immediately after the disposition
- (3) the insolvent intended to prefer one creditor above the other creditors
- (4) the disposition took place not more than six months before sequestration

VRAAG 6

Welke **EEN** van die volgende is die **KORREKTE** stelling?

In 'n aansoek om tersydestelling van 'n vervreemding as 'n onbehoorlike voorkeur, moet die kurator bewys dat...

- (1) die vervreemding nie in die gewone loop van sake gedoen was nie.
- (2) die laste in die boedel die bates onmiddellik na die vervreemding oorskry het.
- (3) die insolvent die bedoeling gehad het om een skuldeiser bo die ander skuldeisers te bevoordeel.
- (4) die vervreemding nie meer as ses maande voor sekwestrasië plaasgevind het nie.

QUESTION 7

Which **ONE** of the following is **NOT** a consequence of the rehabilitation of an insolvent person?

- (1) Property received by the insolvent after rehabilitation will vest in him/her and not in the trustee.
- (2) The insolvent will have contractual freedom and would not need the consent of the trustee to conclude certain contracts
- (3) All the insolvent's debts which arose before his/her sequestration, including those that resulted from fraudulent dealings on his/her part, are discharged.
- (4) The insolvent may be appointed again as director of a company.

VRAAG 7

Welke **EEN** is **NIE** 'n gevolg van rehabilitasie van 'n insolvente persoon nie?

- (1) **Eiendom van die insolvent wat verkry is na rehabilitasie, vestig in hom/haar en nie in die kurator nie.**
- (2) **Die insolvent sal kontraktuele vryheid hê en sal nie meer die kurator se toestemming benodig om sekere kontrakte te sluit nie.**
- (3) **Al die insolvente se skulde wat voor sy/haar sekwestrasie ontstaan het, insluitende die wat deur bedrog aan sy/haar kant ontstaan het, word uitgewis.**
- (4) **Die insolvent mag weer as direkteur van 'n maatskappy aangestel word.**

QUESTION 8

The Master of the High Court may at any time remove the trustee of a trust from office when certain circumstances are present

Which **ONE** of the following is **NOT** such a circumstance that will allow the Master to remove the trustee from office?

- (1) The trustee fails to give security to the satisfaction of the Master within 3 months of being requested to provide such security
- (2) In the event that the estate of the trustee is sequestrated, liquidated or placed under judicial management.
- (3) In the event that the trustee is declared mentally ill or incapable of managing his/her own affairs.
- (4) In the event that the trustee is convicted of committing fraud and sentenced to imprisonment, without the option of paying a fine.

VRAAG 8

Die Meester van die Hoë Hof kan te eniger tyd die trustee van 'n trust vanuit sy/haar amp verwyder indien sekere omstandighede teenwoordig is.

Welke EEN van die volgende is NIE sodanige geval wat die Meester sal toelaat om die trustee uit sy/haar amp te verwyder nie?

- (1) Die trustee versuim om sekuriteit tot die tevredenheid van die Meester te verskaf binne 3 maande na die versoek is om sodanige sekuriteit te lewer.
- (2) In die geval waar die boedel van die trustee gesekwestreer, gelikwideer of onder geregtelike bestuur geplaas word.
- (3) In die geval waar die trustee geestesongesteld of onbevoeg verklaar word om sy / haar eie sake te behartig.
- (4) In die geval waar die trustee skuldig bevind word aan bedrog en gevonnissen word tot gevangenisstraf, sonder die keuse van 'n boete.

QUESTION 9

An executor of a deceased estate is obliged to furnish security for the proper completion of his/her duties, unless the executor is a specific type of person

Which **ONE** of the executors listed below need to still furnish such security?

- (1) A parent of the deceased
- (2) A surviving spouse of the deceased.
- (3) A person exempted under the will of the deceased.
- (4) A grandchild of the deceased

VRAAG 9

'n Eksekuteur van 'n bestorwe boedel is verplig om voldoende sekuriteit te verskaf vir die behoorlike voltooiing van sy/haar pligte, tensy die eksekuteur 'n spesifieke tipe persoon is.

Welke EEN van die eksekuteurs hieronder gelys, moet steeds sodanige sekuriteit lewer?

- (1) 'n Ouer van die oorledene.
- (2) 'n Langslewende gade van die oorledene.
- (3) 'n Persoon vrygestel ingevolge die testament van die oorledene.
- (4) 'n Kleinkind van die oorledene.

QUESTION 10

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

- (1) A Master of the High Court may be appointed as Master for more than one High Court
- (2) A Master of the High Court may only be appointed as Master for 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

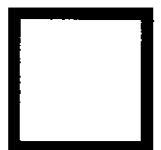
VRAAG 10

Welke **EEN** van die volgende stellings is **FOUTIEF**?

- (1) 'n Meester van die Hoë Hof kan aangestel word as Meester vir meer as een Hoë Hof.
- (2) 'n Meester van die Hoë Hof mag slegs aangestel word as Meester vir een Hoë Hof.
- (3) Die Meester van die Hoë Hof vir die gebied waar die oorledene woonagtig was voor sy/haar afsterwe, het jurisdiksie oor die boedel.
- (4) 'n Meester van die Hoë Hof word aangestel vir die regsgebied van elke Hoë Hof in Suid-Afrika.

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TOTAL FOR SECTION A. 20 MARKS
TOTAAL VIR AFDELING A: 20 PUNTE



SECTION B AFDELING B

Indicate which of the following statements is either **TRUE** or **FALSE** by placing a cross in the correct boxes below

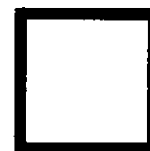
Dui aan welke van die onderstaande stellings WAAR of VALS is deur 'n kruis in die korrekte blok aan te bring.

		TRUE WAAR	FALSE VALS
1	A cheque is payable to bearer if it is payable to 'Michelle or bearer' 'n Tjek is betaalbaar aan toonder indien dit betaalbaar is aan 'Michelle of toonder'.		
2	If there is a discrepancy between the amount payable, stated in words and numbers on a cheque, in terms of the Bills of Exchange Act 34 of 1964, the amount stated in numbers must be followed. As daar 'n verskil bestaan tussen die bedrag betaalbaar, soos vervat in woorde en syfers op 'n tjek, moet die bedrag in syfers gevolg word ingevolge die Wisselwet 34 van 1964.		
3	A debit order is the most reliable negotiable instrument that can be used for paying a monthly cellphone bill 'n Debietorder is die mees betroubare verhandelbare dokument wat gebruik kan word vir die betaling van 'n maandelikse selfoonrekening.		
4	A document where the amount written on it is 100 American dollars, complies with the requirement that it must be a 'sum certain in money' 'n Dokument waar die bedrag geskryf word as 100 Amerikaanse dollars, voldoen aan die vereistes dat dit 'n 'vasgestelde bedrag geld' moet wees.		
5	A special indorsement consists of a signature coupled with the instruction to 'Pay X' or 'Pay X or order' and ensures that an order cheque remains payable to order 'n Endossement op naam bestaan uit 'n handtekening tesame met die opdrag 'Betaal X' of 'Betaal X of order' en verseker dat 'n ordertjek betaalbaar aan order bly.		
6	It is not possible for a trust to be created where the founder is to remain the sole owner of the trust property Dit is nie moontlik om 'n trust te skep waar die stigter die alleeneienaar van die trust se eiendom bly nie.		

7	<p>If a will prescribes that all the assets must be sold, the assets are then transferred in specie Indien 'n testament bepaal dat al die bates verkoop moet word, word die bates toegeken in spesie.</p>		
8	<p>If there is no will or if a will does not contain any direction of the method or methods of liquidation of a deceased estate, the liquidation process is then planned by taking into account the wishes of the beneficiaries Indien daar geen testament bestaan nie of as 'n testament geen aanduiding gee van die metode of metodes van likwidasië van 'n oorledene se boedel nie, word die likwidasië-proses beplan met inagneming van die wense van die begunstigdes.</p>		
9	<p>A creditor seeking to approach a court to obtain a sequestration order must have a liquidated claim of at least R1000 against the intended debtor. 'n Skuldeiser wat 'n hof wil nader om 'n sekwestrasiebevel te verkry moet 'n gelikwideerde eis van ten minste R1000 teenoor die bedoelde skuldenaar hê.</p>		
10	<p>When the executor appoints an agent, both the executor and the agent are liable for the proper performance of the duties of the executor. Wanneer die eksekuteur 'n agent aanstel, is beide die eksekuteur en die agent aanspreeklik vir die behoorlike uitvoering van die pligte van die eksekuteur.</p>		

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TOTAL FOR SECTION B: 10 MARKS
TOTAAL VIR AFDELING B: 10 PUNTE



SECTION C AFDELING C

Match **EACH** of the statements below with **ONE** of the concepts/terms listed below. The reference to sections refers to the Bills of Exchange Act 34 of 1964, unless specifically mentioned otherwise.

Verbind **ELKE** stelling hieronder aan **EEN** van die begrippe/terme wat hieronder genoem word. Die artikels na verwys, is vervat in die Wisselwet 34 van 1964, tensy spesifiek anders vermeld.

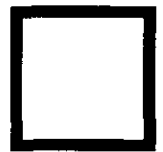
Partial sell-out/ Gedeeltelike uitverkoping	Income beneficiary/ Inkomstebevoordeelde
Two-party credit card/ Tweepartykredietkaart	Disposition not made for value/ Beskikking sonder teenwaarde
Massed estate/ Saamgevoegde boedel	Composition/ Akkoord
Special crossing/ Besondere kruising	Loyalty card/ Lojaliteitskaart
Trust beneficiary/ Trustbevoordeelde	Trust <i>mortis causa</i>
Guarantee function/ Garansiefunksie	Unauthorised signature/ Ongemagtigde handtekening
Forged signature/ Vervalste handtekening	Making over in <i>specie</i> / Toekenning in spesie
Capital beneficiary/ Kapitaalbevoordeelde	Composite signature/ Saamgestelde handtekening
Bewind Trust/ Bewindtrust	Bearer cheque/ Toondertjek
Constitutive function/ Konstitutiewefunksie	Community estate/ Gemeenskaplike boedel
Voidable preference/ Vernietigbare voorkeur	Rehabilitation/ Rehabilitasie
Trust <i>inter vivos</i>	Composition/ Akkoord
Order cheque/ Ordertjek	Transfer function/ Oordragfunksie
Undue preference/ Onbehoorlike voorkeur	General crossing/ Algemene kruising
Three-party credit card/ Driepartykredietkaart	Not transferable cheque/ Nie oordraagbare tjek

	STATEMENT STELLING	CONCEPT/TERM KONSEP/TERM
1	The type of cheque that is payable to 'Alvereen Leonard or bearer' Die tipe tjek wat betaalbaar is aan 'Alvereen Leonard of toonder'.	
2	The signature of an indorser to which the words sans recours has been added, fulfils this function Die handtekening van 'n endossant waar die woorde sans recours bygevoeg is, vervul hierdie funksie.	
3	This type of crossing is made by adding two parallel transverse lines across the face of the cheque, along with the words 'not negotiable'. Hierdie tipe kruising bestaan uit 'n byvoeging op die voorkant van die tjek van twee parallelle dwarslyne tesame met die woorde 'nie verhandelbaar nie'.	
4	A signature on a cheque made by a person that did not have the required signing authority upon signature of this cheque 'n Handtekening op 'n tjek aangebring deur 'n persoon wat wat nie beskik het oor die nodige magtiging ten tyde van ondertekening van hierdie tjek nie.	
5	The type of credit card where the card issuer is not also the supplier Die tipe kredietkaart waar die kaartuitreiker nie ook die leweransier is nie.	
6	The type of trust created when a testator bequeaths property in his/her will to a trustee to administer for the benefit of the beneficiaries. Die tipe trust wat geskep word wanneer 'n testateur eiendom in sy/haar testament bemaak aan 'n trustee om te administreer tot voordeel van die begunstigdes.	
7	This type of trust beneficiary also has a claim to the fruits of the property of the trust Hierdie tipe trustbevoordeelde het ook 'n aanspraak op die vrugte van die eiendom van die trust.	
8	Where the either the whole or a part of the estate of the surviving spouse is joined with the estate of the deceased and distributed amongst the beneficiaries as if the whole of the estate belonged to the deceased. Waar die hele boedel of 'n gedeelte van die boedel van die langlewende eggenoot verbind word met die boedel van die oorledene en verdeel word onder die begunstigdes asof die hele boedel aan die oorledene behoort het.	
9	An alternative to sequestration proceedings where all creditors are bound to an arrangement made with the debtor 'n Alternatief tot sekwestrasie verrigtinge waar al die skuldeisers gebonde is aan 'n reëling wat getref is met die skuldenaar.	

10	<p>A disposition made within 6 months prior to sequestration which results in the favouring of one creditor over another. This disposition can be set aside once it has been shown that immediately after the disposition, the insolvent's liabilities exceeded his assets.</p> <p>'n Vervreemding wat binne 6 maande voor sekwestrasie gemaak is en wat lei tot die bevoordeling van een skuldeiser bo 'n ander. Hierdie vervreemding kan tersyde gestel word sodra daar aangedui word dat onmiddellik na die vervreemding, die insolvent se laste sy bates oorskry het.</p>	
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TOTAL FOR SECTION C: 20 MARKS
TOTAAL VIR AFDELING C: 20 PUNTE



(b)

B Bank	
Geregistreeerde Bank	
Betaal: _____	17 Oktober 2013
<u>die som van Eenduisend Rand</u>	R1000
	Geteken: <u>Michelle Koekemoer</u>
	Michelle Koekemoer

Voltooi die tjek hierbo sodat dit **SLEGS** kwalifiseer as 'n **nie-oordraagbare tjek** ingevolge artikel 6(5) van die Wisselwet 34 of 1964. (2)

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(c) Study the following scenario and answer the questions that follow

A draws a cheque on B Bank in favour of 'C or order'. The cheque is crossed and marked 'not negotiable'. D steals the cheque from C, forges his (C's) signature on the back of the cheque and delivers it to E who takes it in good faith and for value. E instructs his messenger, F, to deposit the cheque for collection in E's banking account with G Bank. G Bank presents the cheque for payment to B Bank. B Bank pays it to G Bank in good faith and without negligence. B Bank debits the account of its client, A, and G Bank credits the account of its client, E.

Discuss whether or not C can institute a legal action against the following parties

- | | | |
|-------|--------|------|
| (i) | A | (2) |
| (ii) | B Bank | (2) |
| (iii) | E | (2) |
| (iv) | G Bank | (2) |
| (v) | D | (2) |
| | | [10] |

(c) Bestudeer die volgende feitestel en beantwoord die vrae wat daarop volg.

A trek 'n tjek op B-bank ten gunste van 'C of order'. Die tjek is gekruis en gemerk 'nie verhandelbaar nie'. D steel die tjek by C, vervals sy (C se) handtekening op die rugkant van die tjek en lewer dit aan E wie dit te goeder en vir waarde neem. E beveel sy bode, F, om die tjek vir invordering te deponeer in E se bankrekening by G-bank. G-bank bied die tjek vir betaling aan by B-bank. B-bank betaal G-bank te goeder trou en sonder nalatigheid. B-bank debiteer die rekening van sy kliënt, A en G-bank krediteer die rekening van sy kliënt, E.

Bespreek of C enige regstappe teen die volgende partye kan neem:

- (i) A (2)
 - (ii) B-bank (2)
 - (iii) E (2)
 - (iv) G-bank (2)
 - (v) D (2)
- [10]

(i) _____

(ii) _____

(iii) _____

[More lines on following page/Meer lyne op volgende bladsy]

(iv)

(v)

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(d) Study the following scenario and answer the questions that follow.

Maphuti Tuba draws a cheque on United Bank in favour of 'Philip Stoop or order' and delivers it to Philip. Philip indorses this cheque in favour of 'Lesego Selemale' and delivers it to Lesego

- (i) Discuss fully whether Lesego is the holder of this cheque. (3)
 - (ii) What is the delivery of the cheque from Maphuti to Philip called? Motivate your answer fully (3)
- [6]

**QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES
VRAAG 2 - DIE REG INSAKE TRUSTS/ BOEDELBEREDDERING**

- (a) The following paragraph is taken from will Answer the questions that follow with reference to the content of this paragraph

'7 Estate to trustees upon trust

I direct that upon my death my estate shall devolve upon and be retained and administered by my trustees who shall stand possessed thereof upon trust for the benefit of my wife, Philile Zwane, during her lifetime and thereafter for the benefit of my children or remoter issue to the extent herein set forth and for these purposes shall have all the powers and authorities herein conferred upon them '

- (i) What type of trust is established upon the death of this testator? Motivate your answer. (2)
(ii) Discuss the general rule of who is able to be appointed as a trustee (4)
[6]

- (a) **Die volgende paragraaf is geneem uit 'n testament. Beantwoord die vrae wat volg met verwysing na die inhoud van die paragraaf.**

'7 **Boedel aan trustees in trust**

Ek bepaal dat my boedel by my dood oorgaan op en gehou en geadministreer word deur my trustees wat dit in trust moet besit ten behoeve van my vrou, Philile Zwane, gedurende haar leeftyd en daarna ten behoeve van my kinders of verder verwyderde nasate in die mate wat hierin uiteengesit is, en vir dié doeleindes het hulle al die bevoegdhede en gesag wat hierin aan hulle verleen word.'

- (i) **Watter tipe trust word gestig by afsterwe van hierdie testateur? Motiveer u antwoord. (2)**
(ii) **Bespreek die algemene reël aangaande wie aangestel kan word as 'n trustee. (4)**
[6]

(i) _____

(ii) _____

[More lines on following page/Meer lyne op volgende bladsy]

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- (b) X is the executor of Y's estate and some of his duties are that he has to open a bank account in the name of the estate, determine whether Y's estate is solvent or not, and publish an advertisement regarding the liquidation and distribution account.

Briefly answer the following questions which relate to these duties:

- (i) When is X required to open a banking account on behalf of the estate? (1)
 (ii) What must X do if it appears that the estate is insolvent? (1)
 (iii) What must the advertisement regarding the liquidation and distribution account mention? (1)
 (iv) In which newspapers is X required to publish the advertisement? (2)
 [5]

- (b) X is die eksekuteur van Y se boedel en van sy pligte sluit in dat hy 'n bankrekening moet open in die naam van die boedel, dat hy moet bepaal of Y se boedel solvent is al dan nie, en dat hy 'n advertensie moet publiseer aangaande die likwidasië- en distribusierekening.

Beantwoord kortliks die volgende vrae wat verband hou met hierdie pligte:

- (i) Wanneer word daar van X vereis om 'n bankrekening te open namens die boedel? (1)
 (ii) Wat moet X doen indien dit blyk dat die boedel insolvent is? (1)
 (ii) Wat moet die advertensie ten opsigte van die likwidasië-en distribusierekening noem? (1)
 (iv) In watter koerante moet X die advertensie in publiseer? (2)
 [5]

(i)

[More lines on following page/Meer lyne op volgende bladsy]

(ii) _____

(iii) _____

(iv) _____

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TOTAL FOR QUESTION 2. 11 MARKS
TOTAAL VIR VRAAG 2: 11 PUNTE



- (b) List the circumstances under which a company will be deemed to be unable to pay its debts (3)
- (b) **Lys die omstandighede waaronder 'n maatskappy geag sal wees nie instaat om skulde te delg nie.** (3)

()

- (c) Briefly discuss the concepts listed below in relation to insolvency.
 - (i) A liquidated claim (2)
 - (ii) Rehabilitation (3)

- (c) **Bespreek kortliks die konsepte hieronder gelys binne die konteks van insolvensie.**
 - (i) 'n Gelikwideerde eis. (2)
 - (ii) **Rehabilitasie.** (3)

(i)

[More lines on following page/Meer lyne op volgende bladsy]

(ii)

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**TOTAL FOR QUESTION 3 13 MARKS
TOTAAL VIR VRAAG 3: 13 PUNTE**

**TOTAL FOR SECTION D 50 MARKS
TOTAAL AFDELING D: 50 PUNTE**

**[TOTAL 100]
[TOTAAL: 100]**

PART 1 (GENERAL/ALGEMEEN) DEEL 1

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INITIALS AND SURNAME
VOORLETTERS EN VAN

DATE OF EXAMINATION
DATUM VAN EKSAMEN

EXAMINATION CENTRE (E.G. PRETORIA)
EKSAMENSENTRUM (BY PRETORIA)

UNIQUE PAPER NO
UNIEKE VRAESTEL NR

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For use by examination invigilator
Vir gebruik deur eksamenopsiener

IMPORTANT

- USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
- MARK LIKE THIS:
- CHECK THAT YOUR INITIALS AND SURNAME HAS BEEN FILLED IN CORRECTLY
- ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
- CHECK THAT YOUR STUDENT NUMBER HAS BEEN FILLED IN CORRECTLY
- CHECK THAT THE UNIQUE NUMBER HAS BEEN FILLED IN CORRECTLY
- CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
- DO NOT FOLD

BELANGRIK

- GEBRUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
- MERK AS VOLG
- KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
- VUL U STUDENTENOMMER VAN LINKS NA REGS IN
- KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK MET
- KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
- MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
- MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

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