

CLA2602 Examination Revision



Define tomorrow.

Exam technique

- Write legibly. Use blue/black ink (not pencil).
- Fill in the required information on the front cover.
- You can start with any question.
- **10 marks = 12 minutes**
 - **Section A (MCQ): 20 marks = 24 minutes**
 - **Section B (T/F): 10 marks = 12 minutes**
 - **Section C (Mix & match): 20 marks = 24 minutes**
 - **Section D (Theory/problem): 50 marks = 60 minutes**
- **Read the instructions carefully.**
- Read through your paper first and plan which question you are going to answer first.
- If you are not sure about a question, leave it and come back to it later.

Exam technique continued

- **Read the questions carefully, highlighting key words or concepts.**
 - Only answer what is asked.
 - Plan your answer before you write it down.
- **If a question contains a set of facts with subsections, read through the entire question first so that you can get an overall view of the issues that need to be discussed.**
 - Highlight key words
 - Jot down the possible legal rules applicable
 - You don't have to include section numbers
 - Don't use abbreviations or SMS language

RELAX

May/June 2018 exam layout

The October/November 2016 examination is divided into **FOUR SECTIONS (A to D)** which consist of questions from all the prescribed chapters in the textbook. The types of questions contained in each section are as follows:

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.

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.

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.

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.

The examination paper contains questions from all topics contained in your prescribed material.



EXAM PAPER


OCTOBER/NOVEMBER 2014

Oct/Nov 2014: Section A: MCQ

QUESTION 2

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

Alvereen Leonard draws a cheque on Trust Bank in favour of “Lesego Selemale or **bearer**” and delivers it to Lesego. This cheque is a/an ...

- (1) bearer cheque. 
- (2) order cheque.
- (3) non-transferable cheque.
- (4) bearer non-transferable cheque.


Oct/Nov 2014: Section A: MCQ

QUESTION 6

Which of the following is an example of a general crossing of a cheque?

- (i) only two parallel transverse lines across the front of the cheque.
- (ii) a cheque which bears boldly across its front the words “non transferable” without the name of the bank.
- (iii) two parallel transverse lines with the name of the bank added across the front of the cheque.
- (iv) two parallel transverse lines, with the words “not negotiable” across the front of the cheque.

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

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

Oct/Nov 2014: Section B: True or False

	True	False
1. Cheques are usually transferred subject to equities.		X
2. The authorised signature of a partnership on a cheque binds all the partners in the partnership.	X	
3. A minor drawer's signature on a cheque fulfils only a guarantee function. [no contractual capacity]		X
4. A cheque that is crossed and marked "not negotiable account payee only" is no longer transferable. [combination section 80]		X
5. A thief that stole a bearer cheque and that is now in possession of such a cheque will never be able to be the holder of the cheque.		X

	True	False
6. The transaction slip supplied by the ATM when a customer makes a deposit, amounts to an admission by the bank that it has received the indicated amount in cash.		x
7. One of the requirements that must be complied with to succeed with an application for the compulsory sequestration of a debtor, is that there is definitely an advantage available to the creditors if the estate is sequestrated.[burden lower]		x
8. A trust created verbally is valid.	x	
9. It will never be possible for an insolvent to be appointed as an executor of a deceased estate.		x

Oct/Nov 2014: Section C: Mix & Match

	STATEMENT	CONCEPT/TERM
1	This is the bank that will request payment, on behalf of its client, from the drawee bank.	Collecting bank
2	The authentic signature of the person who places his signature on the cheque, but without the necessary authority to sign the cheque.	Unauthorised signature
3	Payment that is made on or after the date of maturity of the cheque, in good faith, to a holder and if the holder's title is defective, payment is made without notice thereof.	Payment in due course
4	The payee that is also in possession of that order cheque.	Holder
5	A special kind of transfer that is one of the requirements that must be met before a person may become a holder in due course.	Negotiation

	STATEMENT	CONCEPT/TERM
6	The section contained in the Bills of Exchange Act 34 of 1964 that affords protection to the drawee bank that pays out a deposited cheque that has either not been indorsed or that has been irregularly indorsed.	Section 83
7	This is an example of a conventional electronic fund transfer system where the customer uses a terminal connected to a merchant's cash register and pays electronically for goods purchased from the merchant.	EFTPOS
8	An order of court issued to the sheriff to attach the property of the debtor so that the property may be sold to pay creditors.	Warrant of execution
9	The document to be submitted to the Master that reflects the value of the assets in the deceased estate that also assists to determine the solvency of the estate.	Preliminary inventory
10	A method of redistribution of a deceased estate in terms of which an asset is transferred to an heir without being converted into money.	Making over <i>in specie</i>

Oct/Nov 2014: Section D

QUESTION 1 – NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

(b) 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. D forges C’s signature as indorser on the back of the cheque and delivers it to E, who takes it in good faith and for value. E then **pays** this cheque into his account at F Bank. B Bank pays F Bank in **good faith** and **without negligence**. F Bank credits its client’s account.

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

A

B Bank

D

E

F Bank

A- In terms of Section 79, the cheque has come into the hands of the payee, C [1 mark], and A is therefore not liable on it. A's liability has been discharged [1 mark]

B Bank- S79 – B Bank paid in accordance with a crossed cheque in good faith and without negligence [1 mark]. B Bank is protected by S79 as the requirements of S79 are met. S79 states 'as if payment of the cheque had been made to the true owner thereof'[1 mark]. B Bank rightfully debited A's account and is not liable to C [1]

D- To be liable on cheque, D the thief must have placed her/his own signature on cheque (section 21). D did not and is liable in terms of delict or unjustified enrichment.

E - E was a subsequent possessor of the cheque and he indorsed the cheque after the forged endorsement. Section 81 applies as the checked is crossed and marked not negotiable.

F Bank

Collecting Bank so not regulated under BEA specifically. F Bank is not liable to C [1 mark]

However, it may be found liable if the requirements for a delict are met or [1 mark], if F Bank refused to give information about its client to C, C could have held F Bank liable in terms of S81(5).[1 mark].

QUESTION 2 – THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

The following paragraphs were taken from the will of the late Peter Vermaak:

7 Estate to trustees upon trust

I, Peter Vermaak, 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 Elizabeth Gertruida Vermaak 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.

8 Powers of executors and trustees

My executors and trustees shall have all powers and authority to administer my trust without any limitation. I appoint my wife, Elizabeth Gertruida Vermaak, as both executor and trustee. The executor need not provide a bond of security in relation to administering my estate.

Answer the following questions in relation to the facts and information provided in the above paragraphs from the will from the late Peter Vermaak:

Identify the following parties to this trust that must be established in terms of the late Peter's will. Write the name/description of the party from the set of facts next to the description. (4)

Position	Name/description obtained from set of facts
1. Founder	(i) Peter Vermaak[1 mark]
1. Beneficiary/beneficiaries	(i) Elizabeth Gertruida Vermaak[1 mark]
	Children of Peter Vermaak[1 mark]
1. Trustee	(i) Elizabeth Gertruida Vermaak[1 mark]

Assume that Elizabeth Gertruida Vermaak was a witness to the will of the late Peter Vermaak. Would this change any of your answers provided in (i) above? Discuss in detail. (2)

Yes [1 mark]. A person that has signed as a witness to a will cannot be the beneficiary thereof [1 mark].

What is the procedure that the executor must follow if there is a dispute regarding the claim of one of the deceased estate's creditors? Discuss. (5)

If the executor disputes a claim of a creditor, such a creditor may be requested in writing to file an affidavit in support of the claim. [1 mark]

The executor can also request a person with information relating to the claim to give evidence under oath either before the Master or the appointed magistrate. [1 mark]

If the executor disallows a claim, he must inform the creditor of this via registered post. [1 mark]

The creditor can then approach the court to decide on the validity of the claim. [1 mark] If there is an appearance of unreasonableness in disallowing the claim, the court may make a cost order against the executor in his personal capacity. [1 mark]

The creditor can also wait until the distribution and liquidation account has lain before objecting [1 mark].

QUESTION 3 – THE LAW OF INSOLVENCY

You are an insolvency law practitioner appointed by David Tuba who has been declared insolvent in terms of an order of court. David wants to know from you whether he can engage in the types of employment listed below. In each instance you need to fill in the correct option and then provide a motivation for each answer.

Type of employment	Y/N	Motivate
a(i) Act as a magician at childrens' parties.	a (i). Yes [1/2 mark]	a (i) He will not be a general dealer[1/2 mark]
a (ii) Manage a garage.	a (ii). Yes [1/2 mark]	a (ii). He will not be a general dealer[1/2 mark]
a (iii) Work in a café.	a (iii). No [1/2 mark]	a (iii). There are a variety of items sold in a café so it is not just goods of a particular kind so he would need his trustee's consent first. [1/2 mark]
a(iv) Be appointed as a member of the National Assembly in parliament.	a (iv). No [1/2 mark]	a (iv). It is not possible for a person sequestrated to be a member of parliament [1/2 mark]

The creditors of an insolvent estate may either have a secured claim, a preferential claim and/or a concurrent claim against the insolvent estate.

Indicate what type of claim arises from each of the following, and in case of secured claims also state why you say it is a secured claim.

A general notarial bond registered over movable property. (1)

The holder of a general notarial bond registered over movable property has a preferential claim. [1 mark]

Funeral expenses for the insolvent's spouse amounting to R600. (2)

Funeral expenses for the insolvent's spouse amounting to R600: R300 (1 mark) will be a preferential claim and R300 will be a concurrent claim [1 mark]

An amount owed to the seller of movable property under an instalment sale agreement as regulated under the National Credit Act 34 of 2005. (2)

This will be a secured claim (1 mark) as this is an example of a statutory hypothec in terms of the National Credit Act [1 mark].



EXAM PAPER

MAY/JUNE 2013

MAY/JUN 2013: SECTION D

Question 1 (c)

Study the following scenario and answer the questions below.

Allie draws a crossed cheque with the words 'not negotiable' on B Bank payable to 'Anthea or order'. A thief (Michelle) steals the cheque from Anthea and forges Anthea's endorsement on the back of the cheque and delivers it to Maphuti. Maphuti then places his signature on the cheque and delivers it to Fanie who takes it in good faith and for value. Fanie sends his driver James to deposit the cheque into Fanie's bank account at I Bank. B Bank makes payment to I Bank in good faith and without negligence.

- i. Will Allie be liable towards Anthea? Motivate your answer.(2)
- ii. Will B Bank be liable towards Anthea. Motivate your answer.(2)
- iii. Will Michelle be liable towards Anthea? Motivate your answer.(2)
- iv. Will Maphuti be liable towards Anthea? Motivate your answer.(2)
- v. Will Fanie be liable towards Anthea? Motivate your answer.(2)
- vi. Will I Bank be liable towards Anthea? Motivate your answer. (2)
- vii. Will the answer to vi. with regards to I bank be different if the cheque was written boldly across its face the words "not Transferable" (5)

Question 1 (c)

i. Will Allie be liable towards Anthea? Motivate your answer.(2)

- In terms of Section 79, the cheque has come into the hands of the payee, Anthea [1 mark], and Allie is therefore not liable on it. A's liability has been discharged [1 mark]. **Why am I not using section 21? The bank has made payment.**

ii. Will B Bank be liable towards Anthea. Motivate your answer.(2)

- S79 – B Bank paid in accordance with a crossed cheque in good faith and without negligence [1 mark].
- B Bank is protected by S79 as the requirements of S79 are met. S79 states 'as if payment of the cheque had been made to the true owner thereof'[1 mark]. B Bank rightfully debited Allie's account and is not liable to Anthea [1]

Will Michelle be liable towards Anthea? Motivate your answer.(2)

- **To be liable on cheque, Michelle the thief must have placed her own signature on cheque (section 21) [1 mark].**
- **The thief forged a signature, so she did not place her own signature on the cheque. Therefore, the thief is not liable in terms of the cheque [1 mark].**
- **She can be held liable based on delict or unjustified enrichment [1 mark].**

Will Maphuti be liable towards Anthea? Motivate your answer.(2)

- **Maphuti was a subsequent possessor of the cheque and he endorsed the cheque after the forged endorsement [1 mark].**
- **Maphuti is liable towards Anthea because in terms of Section 81 the true owner can hold subsequent possessor liable [1 mark].**
- **The cheque was marked 'not negotiable' when it was stolen.**

Question 1 (c)

Will Fanie be liable towards Anthea? Motivate your answer.(2)

Fanie was a subsequent possessor of the cheque and he endorsed the cheque after the forged endorsement [1 mark].

Fanie is liable towards Anthea because in terms of Section 81 the true owner can hold subsequent possessor liable [1 mark].

Will I Bank be liable towards Anthea? Motivate your answer. (2)

Collecting Bank so not regulated under BEA specifically.

I Bank is not liable to Anthea [1 mark]

However, it may be found liable if the requirements for a delict are met or [1 mark], if I Bank refused to give information about its client to Anthea, Anthea could have held I Bank liable in terms of S81(5).[1 mark].

Thank you

Define tomorrow.

UNISA

