

**SECTION A  
AFDELING A**

**QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

- (a) With reference to the following scenarios, explain fully in each case whether the cheque is transferable or not
- (i) A draws a cheque on B Bank in favour of "C or order". The cheque is uncrossed and marked "not negotiable" (2)
  - (ii) A draws a cheque on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable" (3)
  - (iii) A draws a cheque on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable - account payee only" (3)
- [8]**

- (b) A draws a cheque for R5 000 on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable". At C's request A posts the cheque to him. D intercepts and steals the cheque before it reaches C. D forges C's signature and negotiates it to E who takes it in good faith and for value. E gives the cheque to his messenger, F to pay it into his (E's) account at G Bank. E owes G Bank R10 000. Therefore, G Bank applies the deposited cheque of R5 000 towards the reduction of E's debt. B Bank pays G Bank in good faith and without negligence.

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

- (i) B Bank (3)
  - (ii) D (2)
  - (iii) E (5)
  - (iv) G Bank (3)
- [13]**

- (c) Name **FOUR** examples of electronic fund transfer systems which are activated by the bank's client (4)

TOTAL FOR QUESTION 1: 25 MARKS

**QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES**

- (a) Lucy is terminally ill and approaches you for advice regarding a will. Lucy is uncertain as to whom she wishes to appoint as executor in her will. Advise Lucy as to who may NOT be appointed as executor. (4)
- (b) Lucy decided that her sister Janet should be appointed as executor in her will. You explained to Lucy that the executor has many rights, powers and duties. Name any 5 (FIVE) of these rights, powers and duties. (5)

- (c) Lucy created a trust in her will to provide for her 15 year old son, Tyrone. Lucy appointed her brother Gary as the trustee of the trust Name the type of trust that Lucy created. (1)
- (d) Upon Lucy's death, her sister Janet approaches you for advice. She advises that Gary is failing to comply with his duties as trustee. Advise Janet what the consequences are for Gary for failing to comply with his duties as a trustee. (5)

TOTAL FOR QUESTION 2: 15 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

- (a) ABC Suppliers approaches a court to obtain a sequestration order against Mr X. What does ABC Suppliers have to prove to obtain the sequestration order? (3)
- (b) ABC Suppliers is successful in obtaining a sequestration order against Mr X and his (Mr X) estate is sequestrated. As a result, Mrs X's property is vested in the trustee of Mr X's insolvent estate. Mr and Mrs X are married out of community of property Mrs X wants to apply to Court for the release of her property. Advise Mrs X of the following:
- (i) Which four categories of Mrs X's property have to be released by the trustee? (4)
- (ii) What happens to Mrs X's property which is not released by the trustee? (3)

TOTAL FOR QUESTION 3 10 MARKS

OCTOBER/ NOVEMBER 2011

SECTION A AFDELING A
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QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) Read the following scenario, and discuss whether or not E is a holder in due course
- On 13 January 2011, A draws a cheque on B Bank in favour of "C or order" and delivers it to C Two months later, C negotiates the cheque to D by endorsement and delivery to repay a gambling debt that C owes D Five months later, D endorses the cheque in favour of E. (9)
- (b) A draws a bill on B in favour of "C or bearer" C endorses this bill specially in favour of D.
- Discuss fully the effect of C's special endorsement on this bill. (9)

- (c) A draws a cheque on B Bank payable to "C or order" and issues the cheque to C. X, a thief, steals the cheque from C, forges C's endorsement on the back of the cheque and delivers it to E. E then places her endorsement on the cheque and delivers it to F, who takes it in good faith and for value

Assuming that F does not receive payment, explain whether F can enforce payment against any of the following parties.

- |       |   |   |
|-------|---|---|
| (i)   | A | 0 |
| (ii)  | X | 0 |
| (iii) | E | 0 |
|       |   | 0 |

- (d) Read the scenario below and answer the question that follows

A draws a cheque on B Bank in favour of "C only". The cheque is crossed and the words "not transferable" appear in black, bold letters beneath the date of the cheque. A delivers the cheque to C. K, a thief, steals the cheque from C, opens a new account in the name of "C & K" at S Bank and pays the cheque into this new account for collection. B Bank pays the amount of the cheque to S Bank in good faith and in the ordinary course of business.

Discuss fully whether C has a right of recourse against S Bank. 0

- (e) List **TWO** similarities between debit orders and stop orders. 0
- (f) Name **THREE** instances in which the issuing bank may refuse to enforce a letter of credit. 0

TOTAL FOR QUESTION 1 25MARKS

## QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES

- (a) Lucy is terminally ill and approaches you for advice regarding a will. Lucy is uncertain as to whom she wishes to appoint as executor in her will. Advise Lucy as to who may and may not be appointed as executor. 0
- (b) Lucy decided that her sister, Janet should be appointed as executor in her will.
- (i) Discuss whether Janet will have to furnish security. 0
- (ii) Assuming that Janet is obliged to furnish security, how is security usually furnished? 0
- (c) Lucy created a trust in her will to provide for her 15 year old son, Tyrone. Lucy appointed her brother, Gary as the trustee of the trust. Name the type of trust that Lucy created. 0
- (d) Upon Lucy's death, her sister, Janet approaches you for advice. Advise Janet under which circumstances the Master may remove Gary from the office of trustee. 0

TOTAL FOR QUESTION 2 15 MARKS

## QUESTION 3 - THE LAW OF INSOLVENCY

- (a) Mr X is unable to pay his debts. He approaches a court to obtain a sequestration order
- (i) What does Mr X have to prove to obtain the sequestration order? (4)
- (ii) Once Mr X has applied to court for the sequestration of his estate, must the court grant such an order? (1)
- (b) Mr X's estate is sequestrated. As a result, Mrs X's property is vested in the trustee of Mr X's insolvent estate. Mr and Mrs X are married out of community of property. Mrs X wants to apply to Court for the release of her property. Advise Mrs X of the following
- (i) Which TWO categories of Mrs X's property have to be released by the Trustee? (2)
- (ii) What happens to Mrs X's property which is not released by the trustee? (3)

TOTAL FOR QUESTION 3 10 MARKS

TOTAL FOR SECTION A 50 MARKS

MAY/JUNE 2012

SECTION A AFDELING A
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QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) A draws a crossed cheque on B Bank payable to "C or order". A thief (D) steals the cheque from C and forges C's signature on the back of the cheque and delivers it to E. E then places his signature on the cheque and delivers it to F who takes it in good faith and for value. F deposits the cheque into his bank account at I Bank. F does not receive payment.

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

- (i) A (1)
- (ii) B Bank (1)
- (iii) C (2)
- (iv) D (2)
- (v) E (4)
- [10]**
- (b) Distinguish between the "issue" and "negotiation" of a cheque and thereafter explain why the distinction between "issue" and "negotiation" is important (5)
- (c) A draws an uncrossed cheque on B Bank in favour of "C or order". X steals the cheque from C, forges C's signature on the back of the cheque and presents the cheque for payment at B Bank. X obtains payment from B Bank over the counter.
- What protection will B Bank enjoy, in the abovementioned example, in respect of the forged indorsement? (5)

- (d) Mr Wong owes Mrs Right a certain amount in terms of a loan agreement. They have agreed that Mr Wong would pay the debt off in instalments.

Advise Mrs Right whether it is more beneficial for her to request a stop order or a debit order against Mr Wong's banking account (5)

TOTAL FOR QUESTION 1 25 MARKS

## QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) John, the executor of the estate of the late Michael Jackson approaches you for advice on the types of documents which are considered "[a] trust document" in terms of the Trust Property Control Act 57 of 1988  
List **THREE** (3) examples (3)
- (b) John would like to know his rights, powers and duties as the executor of the deceased estate  
Name any **FIVE** (5) of these rights, powers and duties (5)
- (c) Phil Makakaba creates a trust in a will in which he bequeaths his estate in trust to a trustee and stipulates that the trustee must use the income of the trust to provide for the testator's widow (Paulina) until her death or remarriage. At that stage the trustee must pay out the capital of the trust to the testator's children, Maphuti, Philile and Anthea
- (i) Does the above scenario comply with the requirements for the creation of a valid trust?  
Give reasons for your answer (5)
- (ii) Assuming that a valid trust is created, what type of trust is created? Give reasons for your answer (2)

TOTAL FOR QUESTION 2 15 MARKS

## QUESTION 3 - THE LAW OF INSOLVENCY

- (a) Meven approaches a court to apply for the sequestration of his estate.  
What are the requirements that Meven must prove in order to obtain a sequestration order? (4)
- (b) Meven is successful in obtaining a sequestration order and a trustee is appointed to administer his insolvent estate. While realising the assets in the estate, the trustee discovers that Meven has alienated some of his assets before the application for sequestration of his assets.  
Name **THREE** (3) forms of dispositions that the trustee can apply to have set aside. (3)
- (c) Briefly explain what the trustee should do with an uncompleted contract under the following circumstances:
- (i) Where neither the insolvent nor the other party has performed  
(ii) Where only the other party has performed, but the insolvent has not. (3)

TOTAL FOR QUESTION 3: 10 MARKS

TOTAL FOR SECTION A 50 MARKS

QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) With reference to the following scenarios, identify in each case the kind of a cheque involved and discuss fully whether Phil is a holder in due course, a holder or a possessor.
- (i) Allie draws a crossed cheque on B Bank in favour of "Cash or order" and delivers it to Phil. (3)
- (ii) Allie draws a crossed cheque on B Bank in favour of "Michel or order" and delivers it to Michel. Michel delivers the cheque to Phil with the intention of transferring the rights to Phil, but neglects to indorse the cheque (3)
- [6]
- (b) Briefly explain the difference between the two categories of non-transferable cheques [4]
- (c) Study the following scenario and answer the questions that follow.

A draws a cheque on B Bank in favour of "C or order". A delivers the cheque to C. D steals the cheque from C and forges C's signature on the back of it. D adds the words "Payable to E" on the back of the cheque and delivers it to E, who takes it in good faith and for value. E signs the cheque and adds the words "Payable to F" on the back of it and delivers it to F, who takes the cheque in good faith and for value. Finally, F signs the cheque and delivers the cheque to G, who takes it in good faith and for value.

- (i) Will A be liable towards G? Motivate your answer (2)
- (ii) Will B Bank be liable towards G? Motivate your answer. (2)
- (iii) Will C be liable towards G? Motivate your answer (2)
- (iv) Will D be liable towards G? Motivate your answer (2)
- (v) Will F be liable towards G? Motivate your answer (3)
- [11]
- (d) After you have completed your degree with Unisa, a commercial bank invites you for an interview for an available position. The interview panel asks you the following question: "Name **TWO** differences between a **stop order** and a **debit order**?" How would you answer this question? [4]

TOTAL FOR QUESTION 1 25 MARKS

QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) At which point does a trust come into existence? (1)
- (b) Allie wants to establish a trust and asks you for advice. She knows there are two different types of trusts, namely a trust *mortis causa* and a trust *inter vivos*. She asks you to list **THREE** differences between these two types of trusts (6)

- (c) Moslee Matlala's husband, John, has just passed away and she approaches you for advice in relation to administration of her deceased husband's estate. Moslee and John were married out of community of property. She informs you that her husband had a cheque account with Gold Free Bank that had a credit balance of R100 000. Other assets in his estate have an estimated value of R500 000. She also tells you that she approached one of Gold Free Bank's branches to withdraw R20 000 from her husband's account to pay for his funeral. However, she was told by one of the bank tellers that only a person who has obtained letters of executorship may access her husband's bank account.
- (i) Who must issue this letter of executorship? (1)
- (ii) Name **FIVE** types of documents that must be submitted before a letter of executorship may be issued (5)

TOTAL FOR QUESTION 2 13 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

A sequestration order may be obtained on one of two ways, namely either by voluntary surrender or compulsory sequestration.

- (a) Name the **FOUR** requirements that the insolvent must comply with before the court can accept the voluntary surrender of the debtor's estate (4)
- (b) Name the **THREE** requirements that the creditor has to prove before the court can grant an order for compulsory sequestration (3)
- (c) Discuss fully the personal consequences of sequestration (5)

TOTAL FOR QUESTION 3 12 MARKS

TOTAL FOR SECTION D 50 MARKS

MAY/JUNE 2013

<p><b>SECTION D</b> <b>AFDELING D</b></p>
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#### QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) Study the following scenario and answer the questions below.
- Michelle draws a cheque on B Bank in favour of 'Mr Plumber or order' as payment for fixing a burst geyser. Upon receipt of the cheque, Mr Plumber endorses the cheque in favour of 6-year-old Lesego who takes it in good faith and for value. Lesego in turn endorses the cheque in favour of 18-year-old Naledi who also takes it in good faith and for value. Michelle then discovers that Mr Plumber did not fix the burst geyser properly and wants to countermand the cheque.

Discuss in detail whether there is an obligation to pay on the cheque in each of the following circumstances:

- (i) Payment from Michelle to Mr Plumber (2)
- (ii) Payment from Mr Plumber to Lesego. (2)
- (iii) Payment from Lesego to Naledi (2)

[6]

(b) Briefly explain the difference between the two categories of non-transferable cheques (4)

(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)

[12]

(d) Thomas Cook Ltd is a company that issues travellers' cheques and requires the traveller to countersign the travellers' cheque before they will effect payment on the travellers' cheque.

Discuss whether a travellers' cheque issued by Thomas Cook Ltd amounts to a bill of exchange in terms of the Bills of Exchange Act 34 of 1964 (3)

**TOTAL FOR QUESTION 1 25 MARKS**

## QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

(a) A court makes an order that damages be paid out to a minor involved in a car accident. However, the court is concerned that the parents will waste the money. What could a court order to prevent the parent's possible wasteful expenditure? (1)

(b) Allie wants to establish a trust *inter vivos* for the benefit of a third party. Allie wants to know whether she may unilaterally revoke the trust at any time. Advise Allie in this regard. (3)

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

The trust deed for ABC Trust requires a minimum number of two trustees to be appointed. The trust deed does not include a power of assumption clause. Allie and Michelle are nominated under the trust instrument as the first trustees of the ABC Trust. Allie passes away after being appointed as trustee.

(i) After Allie passed away, Michelle continues to enter into contracts on behalf of ABC Trust. Discuss fully if these contracts are valid or not. (3)

(ii) Due to the fact that Allie passed away, Michelle now wants to appoint an additional trustee. Discuss fully how this vacancy must be filled. (3)

[6]

(d) List FOUR methods of liquidation that may be used to liquidate a deceased estate (4)

**TOTAL FOR QUESTION 2 14 MARKS**

## QUESTION 3 - THE LAW OF INSOLVENCY



- (a) List **THREE** requirements that an applicant creditor has to prove before a court may grant a court order for compulsory sequestration. (3)
- (b) List **THREE** acts of insolvency as contained in section 8 of the Insolvency Act 24 of 1936. (3)
- (c) Discuss in detail the effect of sequestration on the following uncompleted transactions/contracts:
  - (i) Sequestration of the estate of an employer in terms of an employment contract between an insolvent employer and his/her employees (3)
  - (ii) Sequestration of the estate of a purchaser of an instalment transaction. (2)

[5]

**TOTAL FOR QUESTION 3. 11 MARKS**

**TOTAL FOR SECTION D. 50 MARKS**

OCTOBER/ NOVEMBER 2013

**QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

- (a) List **FOUR (4)** differences between the provisions of sections 58 and 79 of the Bills of Exchange Act 34 of 1964 (8)
- (b)

B Bank	
Registered Bank	
Pay _____	17 October 2013
<u>the sum of <i>One Thousand Rand</i></u>	R1000
	<b>Signed: <u>Michelle Koekemoer</u></b>
	Michelle Koekemoer

Complete the cheque above so that it **ONLY** qualifies as a **non-transferable cheques** in terms of section 6(5) of the Bills of Exchange Act 34 of 1964. (2)

(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]

(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]

## TOTAL FOR QUESTION 1 26 MARKS

### QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

(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]

- (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]

**TOTAL FOR QUESTION 2. 11 MARKS**

### **QUESTION 3 - THE LAW OF INSOLVENCY**

- (a) The property of the solvent spouse married out of community of property to an insolvent spouse, passes to the trustee of the estate of insolvent spouse upon sequestration. However, the solvent spouse can apply that certain types of property be released from the estate of the insolvent spouse.  
List **FIVE** such categories of property that can be released by the trustee (5)
- (b) List the circumstances under which a company will be deemed to be unable to pay its debts (3)
- (c) Briefly discuss the concepts listed below in relation to insolvency.  
(i) A liquidated claim (2)  
(ii) Rehabilitation (3)  
[5]

**TOTAL FOR QUESTION 3 13 MARKS**

**TOTAL FOR SECTION D 50 MARKS**

MAY/JUNE 2014

**SECTION D  
AFDELING D**

**QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

- (a) Discuss in detail in each instance below whether X is a holder, a holder in due course, or merely a possessor.
- (i) A draws a cheque on B Bank in favour of "X or order" and delivers it to X. (2)
  - (ii) A draws a cheque on B Bank in favour of "C or order" The cheque is crossed with the words "not negotiable" across its face C indorses the cheque and delivers it to X, who takes it in good faith and for value. (3)
  - (iii) A draws a cheque on B Bank in favour of "C or order" and delivers it to C. C indorses the cheque and delivers it to X when the cheque is overdue (3)
- [8]
- (b) A draws a cheque for R5 000 on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable". At C's request, A posts the cheque to C. D steals the cheque before it reaches C. D forges C's signature as indorser and delivers it to E, who takes it in good faith and for value. E gives the cheque to his messenger, Y, to pay it into his (E's) account at S Bank. E owes S Bank R10 000 on overdraft. Therefore, S Bank sets off the deposited cheque against the amount owed by E B Bank pays S Bank in good faith and without negligence.
- Discuss whether or not C can institute any legal action against the following parties:
- (i) A (2)
  - (ii) B Bank (2)
  - (iii) D (2)
  - (iv) E (2)
  - (v) S Bank (2)
  - (vi) Y (2)
- [12]
- (c) Answer the following questions within the context of electronic funds transfer:
- (i) What are the differences between an offline system and an online system? (2)
  - (ii) What are the risks associated with home banking? (3)
- [5]

## TOTAL FOR QUESTION 1: 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) Peter and Thandi are married out of community of property. Peter is killed in a mining accident. Thandi is nominated in Peter's will as the executor of Peter's deceased estate, even though Thandi is insolvent at the time of Peter's passing. The value of Peter's deceased estate is R1 million
- Answer the following questions in relation to the administration of Peter's deceased estate:
- (i) Thandi knows that she must prepare a preliminary inventory to submit to the Master. Advise her fully on what must be included in the preliminary inventory as well as its purpose. (4)
  - (ii) Thandi is concerned that she may not be able to provide a bond of security to the value of R1 million. Advise her fully on her available options. (4)
- [8]
- (b) Allie wants to create a trust *inter vivos*. She knows there are certain provisions she needs to include in her trust deed. However, she is not sure what certain terms mean. She wants to know what "power of assumption"; "power of subrogation"; and "power of substitution" entails in relation to trusts.
- Advise her fully. (3)

- (c) Michelle is a trustee for the CLA2602 trust. The trust instrument for the CLA2602 trust does not provide for remuneration of trustees. Michelle wants to know whether she is entitled to receive remuneration and if so, what is taken into consideration when determining the remuneration.

Advise her fully.

(4)

## TOTAL FOR QUESTION 2: 15 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

- (a) We know that there are two ways through which a natural person can be declared insolvent, namely voluntary surrender or compulsory sequestration. List the differences between these two concepts in the table provided below.

**(6)**

- (b) Lesego and Itumeleng are married out of community of property to each other. Itumeleng is sequestrated. Lesego has heard that her property may also vest in the trustee of Itumeleng's insolvent estate. However, Lesego also heard that it is possible for the trustee for Itumeleng's insolvent estate to release certain of Lesego's property from the insolvent estate.

Advise Lesego fully in this regard.

(4)

## TOTAL FOR QUESTION 3: 10 MARKS

## TOTAL FOR SECTION D 50 MARKS

OCTOBER/NOVEMBER 2014

SECTION D AFDELING D
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### QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) The holder of an order cheque must indorse and deliver that cheque in order to negotiate such a cheque. Answer the questions that follow that relates to indorsements on cheques
- (i) List 2 (TWO) of the requirements needed for a valid indorsement (2)
  - (ii) List the 3 (THREE) types of indorsements that can be made on a cheque (3)
  - (iii) Discuss critically whether a bearer cheque may be converted into an order cheque by making use of an indorsement on a cheque (3)

[8]

- (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:

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

- (c) The Bill of Exchange Act 34 of 1964 distinguishes between two kinds of crossings that can be made on a cheque. Briefly explain the differences between these types of crossings. (2)
- (d) You know that there are various parties involved in the operation of a letter of credit. Identify these parties and briefly discuss the role of each party in the operation of a letter of credit. (5)

## TOTAL FOR QUESTION 1 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) 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:

- (i) 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.

Position	Name/description obtained from set of facts
1 Founder	(i)
2. Beneficiary/beneficiaries	(ii)
3 Trustee	(iii)

(4)

- (ii) Assume that Elizabeth Gertruda 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)
- (iii) The trustee wants to know whether the provisions of the trust can be varied. Advise the trustee fully in this regard. (5)
- (iv) 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)

[16]

TOTAL FOR QUESTION 2 16 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

- (a) 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	Can David engage in this type of employment? Write either "yes" or "no" in the space provided.	Motivate why you either wrote 'yes' or 'no' in the previous column
<i>a (i)</i> Act as a magician at childrens' parties	<i>a (i)</i>	<i>a (i)</i>
<i>a (ii)</i> Manage a garage	<i>a (ii)</i>	<i>a (ii)</i>
<i>a (iii)</i> Work in a cafe	<i>a (iii)</i>	<i>a (iii)</i>

<i>a (iv)</i> Be appointed as a member of the National Assembly in parliament	<i>a (iv)</i>	<i>a (iv)</i>



- (b) 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

- (i) A general notarial bond registered over movable property (1)  
(ii) Funeral expenses for the insolvent's spouse amounting to R600 (2)  
(iii) 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)  
[5]

**TOTAL FOR QUESTION 3 9 MARKS**

**TOTAL FOR SECTION D 50 MARKS**

MAY/JUNE 2015

<p><b>SECTION D AFDELING D</b></p>
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**QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

- (a) List **TWO** requirements that bills of exchange, cheques and promissory notes have to satisfy in order to be considered as viable alternatives to cash. (2)
- (b) Study the following scenario and answer the question that follows:

Allie draws a cheque on B Bank in favour of "Lesego or order". Allie delivers the cheque to Lesego. David steals the cheque from Lesego and forges Lesego's signature on the back of it. David adds the words "Payable to Michelle" on the back of the cheque and delivers it to Michelle, who takes it in good faith and for value. Michelle, in turn, signs the cheque and adds the words "Payable to Fanie" on the back of it and delivers it to Fanie, who takes the cheque in good faith and for value. Finally, Fanie signs the cheque and delivers the cheque to Maphuti, who takes it in good faith and for value. Maphuti does not receive payment from B Bank because payment on the cheque has been countermanded

Taking into consideration that Lesego's signature was forged discuss in detail whether Fanie will be liable to Maphuti for payment on the cheque. (5)

- (c) David draws a cheque on B Bank in favour of "Allie or bearer". David gives the cheque to Allie as payment for legal advice given by Allie to David. Philip steals the cheque from Allie and gives it to Chrizzell, his fiancé, as a birthday gift who does not know that Philip stole the cheque.

Will Chrizzell be a holder in due course? Discuss fully. (4)

- (d) Allie draws a cheque on B Bank in favour of "Jopie or order" The cheque is crossed generally. X steals the cheque from Jopie, forges Jopie's signature on the back of the cheque and delivers it to David who takes it in good faith and for value. David deposits the cheque for collection into his account with S Bank S Bank presents the cheque for payment to B Bank. B Bank pays the cheque in good faith and without negligence. S Bank credits the account of its client David

Answer the following questions in relation to the above set of facts.

- (i) Explain whether David was the holder of the cheque. (1)
  - (ii) Explain whether Jopie has any claim against Allie for payment (3)
  - (iii) Explain whether Jopie has any claim against B Bank for payment. (3)
  - (iv) Assume that the words "not transferable" were added to the above cheque. How would this influence the liability of S Bank towards Jopie? Discuss. (3)
- [10]

- (e) There are generally two types of credit cards that are used as payment methods

Answer the following questions in relation to such credit cards.

- (i) List the types of credit cards (2)
  - (ii) Discuss the differences between the two types of credit cards (2)
- [4]

## TOTAL FOR QUESTION 1 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) 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 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

- (i) What procedure must Elizabeth Gertruida Vermaak, as the trustee, follow to vary the provisions of the trust? Briefly discuss (1)
  - (ii) What will Elizabeth Gertruida Vermaak, as a trustee, have to prove in order for the provisions of the trust to be varied? Discuss in detail. (4)
  - (iii) What are the consequences if a trustee fails to comply with the duties that were imposed on her by the trust document? Briefly discuss. (3)
- [8]

- (b) Name **THREE** methods which can be used to liquidate a deceased estate (3)

- (c) Assume that you are appointed as the executor of the deceased estate of the deceased Peter Smith. The deceased estate is insolvent. Briefly discuss the administration of the estate of the late Peter Smith. (4)

**TOTAL FOR QUESTION 2 15 MARKS**

### **QUESTION 3 - THE LAW OF INSOLVENCY**

- (a) Makroe Suppliers approaches a court to obtain a sequestration order against David. Answer the following questions that relate to Makroe's application for the sequestration of David's estate:
- (i) Will the sequestration process that must be followed be voluntary surrender or compulsory sequestration? Motivate your answer. (1)
  - (ii) What does Makroe Suppliers have to prove in order to obtain such a sequestration order? (3)
- [4]
- (b) List SIX acts of insolvency that can be committed by a debtor. [6]

**TOTAL FOR QUESTION 3 10 MARKS**

**TOTAL FOR SECTION D: 50 MARKS**

OCTOBER/NOVEMBER 2015

<b>SECTION D AFDELING D</b>
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#### **QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT**

- (a) List THREE functions that the delivery of a cheque fulfils. (3)
- (b) Name and briefly discuss THREE relationships between the parties to a cheque. (6)
- (c) Lesego draws a cheque on B Bank in favour of "Maphuti or order" and delivers the cheque to Maphuti. Lax, a thief, steals the cheque from Maphuti, forges Maphuti's signature in blank on the back of the cheque and delivers it to Michel. Michel then places her signature on the back of the cheque and delivers it to Jopie, who takes it in good faith and for value.

Assume that Jopie does not receive payment. Explain whether Jopie can enforce payment against any of the following parties:

- (i) Lesego (1)
- (ii) Maphuti (2)
- (iii) Lax (2)
- (iv) Michel (4)

- (d) Name THREE instances in which the issuing bank may refuse to enforce a letter of credit (3)
- (e) Gold Bank is a newly registered bank which will commence business in February 2016. It wants to issue credit cards to its clients to make purchases at selected food outlets. Gold Bank has heard about the National Credit Act 34 of 2005 (the Act) which regulates credit agreements.
- Gold Bank wants to know whether the credit card constitutes a credit agreement in terms of the Act. Motivate your answer (4)

## TOTAL FOR QUESTION 1 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS/ ADMINISTRATION OF ESTATES

- (a) Gertrude is a single parent of a minor child, John, and she is terminally ill. She approaches you with a valid will that provides for creation of a trust for the benefit of John on her death until he turns the age of majority.
- (i) Will the trust created be a trust *inter vivos* or trust *mortis causa*? Motivate your answer (3)
- (ii) Discuss the circumstances in terms of which a trust may be terminated (4)
- (b) A letter of executorship can be issued to any natural person with full capacity. Name THREE persons who cannot be appointed as executors of deceased estate (3)
- (c) List FIVE types of documents that must be submitted to the Master before an executor in the deceased estate may be issued with letters of executorship (5)

## TOTAL FOR QUESTION 2 15 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

Study the following scenario and answer the questions that follow

You are a practising attorney specialising in insolvency law. Logan, an unmarried engineer, approaches you and asks you whether it is possible for a debtor to approach the court for sequestration of his or her own estate. Logan was advised by his friend, Marcus, that if the court accepts sequestration of his estate, his entire estate will vest in the trustees of the insolvent estate. Advise Logan on the following

- (a) What is this type of sequestration called? (1)
- (b) Name FOUR requirements that must be satisfied in order to obtain such a sequestration order (4)
- (c) The sequestration order in (a) has been granted by the court. Which properties in Logan's insolvent estate may be excluded from vesting in the insolvent estate? (5)

## TOTAL FOR QUESTION 3 10 MARKS

## TOTAL FOR SECTION D 50 MARKS

MAY/JUNE 2016

<b>SECTION D AFDELING D</b>
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### QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) Marcus draws a cheque on B-Bank in favour of "John or bearer" Marcus gives the cheque to John as payment for legal advice given by John to Marcus Amos steals the cheque from John and gives it to Queen, his fiancé, who does not know that Amos stole the cheque, as a birthday gift Will Queen be a holder in due course? Discuss fully (5)
- (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 and forges C's signature as endorser on the back of the cheque and delivers it to E, who takes it in good faith and for value E pays this cheque into his own 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

- (i) A (2)
- (ii) B-Bank (2)
- (iii) D (2)
- (iv) E (2)
- (v) F-Bank (2)
- (vi) Assume that the words "not transferable" appear in black bold letters across the cheque How would this influence the liability of F Bank toward C? Discuss fully (5)
- (c) Name THREE types of electronic fund transfer systems which are activated by customers (3)
- (d) List TWO similarities between a debit order and stop order (2)

## TOTAL FOR QUESTION 1 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES

- (a) Marcus creates a trust in his will in which he bequeaths his estate in trust to a trustee and stipulates that the trustee must use the income of the trust to provide for the testator's widow (Jane) until her death or remarriage At that stage the trustee must pay out the capital of the trust to the testator's children Maphuti, Lesego and Anthea

Does the above scenario comply with the requirements for the creation of a valid trust?  
Give reasons for your answer (5)

- (b) The Trust Property Control Act 57 of 1988 regulates trusts that are created in terms of a "trust instrument" Name THREE types of trust instruments in terms of which a trust may be created under this Act (3)

- (c) Marcus recently passed away after having suffered from lung cancer. In terms of his will his friend Siya is appointed as executor of his deceased estate. Siya is close to finalizing the liquidation of the assets in Marcus's estate. He is advised that the Master may in certain circumstances discharge him from his office as an executor before the estate has been finalized.

Discuss the circumstances under which an executor may be removed from his office as an executor before the finalisation of an estate (7)

**TOTAL FOR QUESTION 2 15 MARKS**

### **QUESTION 3 - THE LAW OF INSOLVENCY**

Study the following facts and answer the questions that follow

You are a practising attorney specialising in insolvency law. Ms Tema, an unmarried chef, approaches you and asks you about the possible procedures available for sequestration of the estate of a natural person. Ms Tema was advised by her cousin, Miranda, that if the court accepts sequestration of her estate, her entire estate will vest in the trustees of insolvent estate. Advise Ms Tema on the following

- (a) TWO types of sequestration procedures available to natural persons (2)
- (b) One of the requirements for both sequestration procedures in (a) above relates to proof of "advantage to creditors". Briefly explain to Ms Tema what "advantage to creditors" means? (2)
- (c) The personal consequences of sequestration (6)

**TOTAL FOR QUESTION 3 10 MARKS**

**TOTAL FOR SECTION D 50 MARKS**

OCTOBER/NOVEMBER 2016

SECTION D AFDELING D
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#### QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) The holder of an order cheque must indorse and deliver that cheque in order to negotiate such a cheque. Answer the questions that follow that relates to indorsements on cheques
- (i) List TWO of the requirements needed for a valid indorsement (2)
- (iii) List THREE types of indorsements that can be made on a cheque (3)

[5]

- (b) Study the following scenario and answer the question that follows

Allie draws a cheque on B-Bank in favour of "Lesego or order". Allie delivers the cheque to Lesego. David steals the cheque from Lesego and forges Lesego's signature on the back of the cheque. David adds the words "Payable to Michelle" on the back of the cheque and delivers it to Michelle, who takes it in good faith and for value. Michelle, in turn, signs the cheque and adds the words "Payable to Fanie" on the back of it and delivers it to Fanie, who also takes it in good faith and for value. Finally, Fanie signs the cheque and delivers it to Maphuti, who also takes it in good faith and for value. Maphuti does not receive payment from B-Bank, because the payment on the cheque has been countermanded.

Taking into account that Lesego's signature was forged, discuss in detail whether or not Fanie will be liable to Maphuti for payment on the cheque (5)

- (c) Briefly explain the difference between the two categories of non-transferable cheques (4)

- (d) Study the following statement and answer the question that follows

"Most travellers' cheques do not fall within the ambit of the Bills of Exchange Act 34 of 1964"

Critically discuss the correctness of this statement (5)

- (e) Express Bank, a South African bank, has concluded an agreement with a number of South African suppliers, including Price Tag Clothing Store ("Price Tag"), in terms of which the latter will accept credit cards issued by Express Bank. Express Bank has issued credit cards to a number of clients including Ms Spencer. This agreement is governed by standard terms and conditions of agreement between the parties to a three-party credit card. Ms Spencer lost her credit card on 15 August 2016. On 30 August 2016 she received a notification on her mobile phone that the card was used for purchase of goods at Price Tag for R4 000. She then notified the Express Bank about the loss of the card on 05 September 2016. Despite her notification, she receives another notification that another purchase of goods for the value of R3 000 was made at the Price Tag on 10 September 2016. Express Bank only notified Price Tag about the loss of Ms Spencer's card on 15 September 2016. However, Ms Spencer received a third notification that a purchase was made at Price Tag on 17 September 2016. Ms Spencer cannot locate the thief of the card.

Briefly explain who bears the risk of loss of the card on the purchases made on the following dates

- (i) 30 August 2016 (2)  
(ii) 10 September 2016 (2)  
(iii) 17 September 2016 (2)

## TOTAL FOR QUESTION 1 25 MARKS

### QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES

- (a) Allie wants to create a trust *inter vivos*. She knows that there are certain provisions she needs to include in her trust deed. However, she is not sure what certain terms mean. She wants to know what "power of assumption", "power of subrogation", and "power of substitution" entails in relation to trusts.

Explain each of these terms to Allie (3)

- (b) Michelle has been appointed as the trustee of *Elenchus* Trust. The trust instrument for the *Elenchus* Trust does not provide for the remuneration of trustees. Michelle wants to know whether she is entitled to receive remuneration and if so, what is taken into consideration when determining the remuneration.

Advise Michelle fully (5)

- (c) Johan, the director of Coetzee & Makgoka Attorneys, is approached by the family of the late Mr Modiba for advice on how to liquidate and distribute the property in the estate of the deceased according to his will. The will has appointed the directors of the law firm as executors of Modiba's estate.

Discuss the considerations that Johan must take into account when determining the relevant Master of the High Court who will have jurisdiction to supervise the administration of Mr Modiba's estate. (5)

- (d) A "community estate" and a "massing of estate" are both special types of estates. Briefly discuss the differences between these two special types of estates. (2)

## TOTAL FOR QUESTION 2 15 MARKS

### QUESTION 3 - THE LAW OF INSOLVENCY

- (a) List FIVE "acts of insolvency" that can be committed by the debtor in terms of the Insolvency Act 24 of 1936. (5)
- (b) Discuss in detail the effect of sequestration on the following uncompleted transactions/contracts:
- (i) Sequestration of the estate of the employer in terms of an employment contract between an insolvent employer and his/her employees. (3)
  - (ii) Sequestration of the estate of a purchaser of an instalment transaction. (2)
- [5]

## TOTAL FOR QUESTION 3 10 MARKS

## TOTAL FOR SECTION D 50 MARKS

OCTOBER/NOVEMBER 2017

SECTION D AFDELING D
-------------------------

### QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT

- (a) With reference to the definition of a 'holder' in terms of the Bills of Exchange Act 34 of 1964, discuss whether a thief who is in possession of bearer and order cheque may become the holder of these cheques. (5)



- (b) Study the following scenario and answer the question that follows

Allie draws a cheque on B-Bank in favour of "Charles or order" Allie delivers the cheque to Charles David steals the cheque from Charles and forges Charles' signature on the back of the cheque David adds the words "Payable to Ephraim" on the back of the cheque and delivers it to Ephraim who takes it in good faith and for value Ephraim, in turn signs the cheque and adds the words "Payable to Fanie" on the back of it and delivers it to Fanie, who also takes it in good faith and for value Finally, Fanie deposits the cheque into his bank account at Intel bank Fanie does not receive payment on the cheque as the cheque has been countermanded

Discuss whether Fanie can institute an action against the following parties

- |       |         |     |
|-------|---------|-----|
| (i)   | Allie   | (1) |
| (ii)  | B-Bank  | (1) |
| (iii) | Charles | (2) |
| (iv)  | David   | (2) |
| (v)   | Ephraim | (5) |
- [11]

- (c) John is in possession of R2000 that he wants to deposit into his bank account On a weekend and after banking office hours, he deposits R1000 at the nearest auto teller machine (ATM) and receives a deposit slip from the machine The following Monday he goes to the nearest branch of the bank, deposits the other R1000 over the counter, and receives a deposit slip A few days later he goes to the bank to withdraw part of the money deposited and is told that there is no money in his account

Advise John on whether he can submit the deposit slips from the ATM and the one issued over the counter to prove that the relevant cash amounts were received by the bank (5)

- (d) After you have completed your degree with UNISA, a commercial bank invites you for an interview for an available position The interview panel asks you the following question "Name **TWO** differences between a stop order and a debit order?" How would you answer this question? (4)

**TOTAL FOR QUESTION 1 25 MARKS**

## **QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES**

- (a) A letter of executorship can be issued to any natural person with full capacity Name **THREE** persons who cannot be appointed as an executor of deceased estate (3)

- (b) List **FIVE** types of documents that must be submitted to the Master before an executor in the deceased estate may be issued with letters of executorship (5)

- (c) The will of the late Johan Koekemoer created a trust and appointed Caleb as the trustee to administer the trust for the benefit of the beneficiaries appointed by the testator Caleb realises that the administration of the trust will require the appointment of additional trustees to assist him in the administration of the trust The will of the deceased does not make provisions for the appointment of additional trustees

Advise Caleb on the type of trust and whether he will be able to appoint additional trustees (7)

**TOTAL FOR QUESTION 2 15 MARKS**

## **QUESTION 3 - THE LAW OF INSOLVENCY**

- (a) List **FIVE** "acts of insolvency" that can be committed by the debtor in terms of the Insolvency Act 24 of 1936 (5)

- (b) Meven has successfully approached the court to apply for the sequestration of his own estate. The trustee is appointed to administer his insolvent estate. While realising the assets in the estate, the trustee discovers that Meven has alienated some of his assets before the application for sequestration of his assets.

Name FIVE (5) forms of dispositions that the trustee can apply to set aside the alienation of assets by Meven (5)

**TOTAL FOR QUESTION 3 10 MARKS**

**TOTAL FOR SECTION D 50 MARKS**

MAY/JUNE 2018

**SECTION D  
AFDELING D**

**QUESTION 1 - NEGOTIABLE INSTRUMENTS AND OTHER METHODS OF PAYMENT  
VRAAG 1 - VERHANDELBARE DOKUMENTE EN ANDER BETALINGSMETODES**

- (a) List **TWO** requirements that bills of exchange, cheques and promissory notes have to satisfy in order to be considered as viable alternatives to cash (2)
- (b) A draws a cheque for R5 000 on B Bank in favour of "C or order". The cheque is crossed and marked "not negotiable". At C's request, A posts the cheque to C. D steals the cheque before it reaches C. D forges C's signature as indorser and delivers it to E, who takes it in good faith and for value. E gives the cheque to his messenger, Y, to pay it into his (E's) account at S Bank. E owes S Bank R10 000 on an overdraft. S Bank sets off the deposited cheque against the amount owed by E. B Bank pays S Bank in good faith and without negligence.

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

- (i) A (2)  
(ii) B Bank (3)  
(iii) D (3)  
(iv) E (5)

**[15]**

- (c) David draws a cheque on B Bank in favour of "Allie or bearer". David gives the cheque to Allie as payment for legal advice given by Allie to David. Philip steals the cheque from Allie and gives it to Chrizzell, his fiancé, as a birthday gift. Chrizzell does not know that Philip stole the cheque.

Will Chrizzell be a holder in due course? Discuss fully (6)

- (d) There are generally two types of credit cards that are used as payment methods.

Answer the following questions in relation to credit cards

- (i) List the TWO types of credit cards (2)  
(ii) Discuss TWO differences between the two types of credit cards (2)

**[4]**

**TOTAL FOR QUESTION 1 25 MARKS**

## QUESTION 2 - THE LAW OF TRUSTS / ADMINISTRATION OF ESTATES

- (a) Mpfari wants to create a trust *inter vivos*. She knows that there are certain provisions she needs to include in her trust deed. However, she is not sure what certain terms mean. She wants to know what "power of assumption", "power of subrogation", and "power of substitution" entails in relation to trusts.

Explain each of these terms to Mpfari (3)

- (b) Answer the following questions with regard to the furnishing of security by the executor

(i) List **THREE** persons who are not obliged (i.e. exempted) to furnish security for the administration of the deceased estate to the Master (3)

(ii) List any **TWO** persons who may be required to furnish security by the Master, even if the person is exempted from furnishing such security (2)  
[5]

- (c) The will of the late Johan Koekemoer created a trust and appointed Caleb as the trustee to administer the trust for the benefit of the beneficiaries appointed by the testator. Caleb realises that the administration of the trust will require the appointment of additional trustees to assist him in the administration of the trust. The will of the deceased does not make provisions for the appointment of additional trustees.

Advise Caleb on the type of trust that was created and whether he will be able to appoint additional trustees (7)

TOTAL FOR QUESTION 2 15 MARKS

## QUESTION 3 - THE LAW OF INSOLVENCY

- (a) You have been appointed as the trustee of the insolvent estate of Meven Jones. While liquidating the assets in the estate for the benefits of creditors, you discover that Meven has disposed of some of the assets before sequestration, thereby prejudicing the rights of creditors. You want to make an application to the court to have such dispositions set aside.

List **FIVE** types of disposition of assets in the insolvent estate that may be set aside by the court (5)

- (b) Discuss in detail the effect of sequestration on the following uncompleted transactions/contracts

(i) Sequestration of the estate of an employer in terms of an employment contract between an insolvent employer and his or her employees (3)

(ii) Sequestration of the estate of a purchaser of an instalment transaction (2)

[5]

TOTAL FOR QUESTION 3 10 MARKS

TOTAL FOR SECTION D 50 MARKS