

- 1. Answer ALL questions.
- 2. Substantiate your answer by reference to applicable case law and/or legislation.

INSTRUCTIONS

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EXAMINERS:

Time: 3 hours
Subject: INSTRUMENTS OF PAYMENT
Code: LIP311E
Marks: 100

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**EXAMINATIONS 2023
 MAIN EXAMINATION PAPER**

INSTRUMENTS OF PAYMENT LIP311E
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**UNIVERSITY OF FORT HARE
 NELSON R MANDELA SCHOOL OF LAW
 (East London Campus)**

QUESTION 1

Multiple choice: Choose the correct answer

1.1 The main duty of a customer in the banker-customer relationship (2)

A) To honour obligations arising from any agreement

B) To keep his/her account details and PIN secret

C) To act in good faith

D) To make sure s/he does not withdraw more than what has been deposited

1.2 These requirements set out in the Banks Act 94 of 1990 are aimed at ensuring professional management of a bank's business and related risks. (2)

A) Fiduciary requirements

B) Prudential requirements

C) Contractual requirements

D) Mandatory requirements

1.3 Wendy orders her bank to pay Peter an amount of R500 but only if he signs receipt on the instrument. Who is the drawee in this transaction, and will this be considered to be a bill of exchange? (2)

A) Peter is the drawee and it is not a bill of exchange

B) The bank is the drawee and it is a bill of exchange

C) The bank is the drawee and it is not a bill of exchange

D) Wendy is the drawee and it is a bill of exchange

1.4 In which landmark legal case did the court establish the conditions under which banks owed confidentiality to their clients? (2)

A) *Tournier v National Provincial and Union Bank of England*

B) *Standard Bank of SA Ltd v Ooneate Investments (Pty) Ltd*

C) *Densam (Pty) Ltd v Cwylinat (Pty) Ltd*

D) *Diners Club SA (Pty) Ltd v Singh*

1.5 South African courts generally follow which country's decisions when interpreting the Bills of Exchange Act? (2)

A) Holland

B) The USA

C) England

D) The Netherlands

- 1.6 Anna buys a trailer from John and gives John a promissory note in which she promises to pay John R20 000 on the 15th of May 2022. John accepts the promissory note. What do we call John in this situation? (2)
- A) the drawer
B) the payee
C) the drawee
D) the maker
- 1.7 Bongli buys a washing machine from Cindy. Bongli gives Cindy a promissory note in which he promises to pay Cindy R5000 on the last day of that month. Cindy owes Harry R10 000 and negotiates the note to Harry. Who is the holder of this note, Cindy, Bongli or Harry? (2)
- A) Cindy
B) Harry
C) Bongli
D) There is no holder
- 1.8 Until 1887, this was the sole source of common law in South Africa with respect to negotiable instruments. (2)
- A) Betalreg
B) The Bills of Exchange Act
C) British common law
D) Wisselrecht
- 1.9 A cybercrime in which a target or targets are contacted by email, telephone, or text message by someone posing as a legitimate institution to lure individuals into providing sensitive data such as personally identifiable information, banking, and credit card details, and passwords. (2)
- A) Hacking
B) Cyberstealing
C) Phishing
D) Trouting
- 1.10 The customer mandates his/her bank to make regular payments, usually a fixed amount of money, to a third party. (2)
- A) Debit orders
B) Letters of credit
C) Stop orders
D) Travellers' cheques

Asanda goes to the ATM to make a withdrawal. Unbeknownst to Asanda, a thief has inserted a foreign object into the ATM card reader. This causes the card to be stuck in the card reader. After she has inserted her card into the ATM, the ATM does not respond in any way. This is due to the fact that the ATM does not register that a card has been inserted. The screen does not change or request Asanda to enter her PIN. She enters her PIN in any case in the hope that the ATM will respond. She also presses the cancel button in an attempt to retrieve her card. The card is, however, not ejected. Asanda leaves the ATM, thinking the machine is simply malfunctioning. The thief, who had been standing nearby has seen Asanda enter her PIN and he is now aware of what her PIN is. After she leaves, the card thief removes the object that he had placed in the card reader and retrieves Asanda's card. He then rushes to a nearby ATM and withdraws all the money available in Asanda's account.

4.1 Will the bank be liable to refund Asanda? In your answer, refer to the cardholder's responsibilities at an ATM in terms of the Code of Banking Practice. (10)

4.2 What steps will you advise her to take, if she comes to you for advice? (5)

QUESTION 4

[10 Marks]

What is a fiduciary relationship and does a bank have a fiduciary duty toward its customers?

QUESTION 3

[20 Marks]

[15]

of banks? Motivate your answer.

2.2 In your opinion did VBS Mutual Bank adhere to the prudential requirements expected

[5]

2.1 Discuss the purpose of the Banks Act 94 of 1990 and define prudential requirements.

QUESTION 2

[20 Marks]

4.3 Match column A with column B

(12)

1. Credit Transfer	a) Where a debtor intends to pay his creditor by means of a credit transfer, the creditor is called a ...
2. Debit Transfer	b) Initiated by the creditor who instructs his bank to collect payment of a certain, and mostly recurring, debt from the debtor
3. Electronic Payments	c) Where a debtor intends to pay his creditor by means of a credit transfer he is called the ...
4. Originator	d) It allows retail payments to be effected by the transfer of funds electronically from the accounts of customers to the accounts of retailers
5. Beneficiary	e) What the beneficiary obtains is a personal right against his bank to credit and pay out the amount of the transfer to him
6. Electronic Funds Transfer	f) With these payments as with debit orders and credit card payments, the bank does not act as a representative but merely as a mandatory

[27 Marks]

QUESTION 5

Read the section below and then answer the question.

South Africa rolls out PayShap, a new real-time digital payments service

Written by Shrutika Khairnar
17th March 2023

The South African Reserve Bank (SARB) has announced the launch of PayShap, a low-value, real-time rapid payments platform for consumers and businesses designed to boost financial inclusion in the country.

<p>b) The remedy used where property has been transferred and the</p>	<p>2. <i>Conditio Sine Causa</i></p>
<p>a) The remedy applicable in cases where none of the other conditions applies</p>	<p>1. <i>Conditio Indebiti</i></p>
<p>B</p>	<p>A</p>

(8)

5.2 Match Column A with Column B

(10)

5.1 What are your thoughts on the new PayShap system? Do you think it could boost financial inclusion in the country?

PayShap was born out of the Rapid Payments Programme, led by BankserwAfrica and South Africa's payments industry, as part of SARB's Vision 2025, which sets out nine goals to improve the country's payment system.

With PayShap, consumers will have access to instant, real-time payments across participating banks, and will be able to use a payment identifier other than a bank account to facilitate transactions.

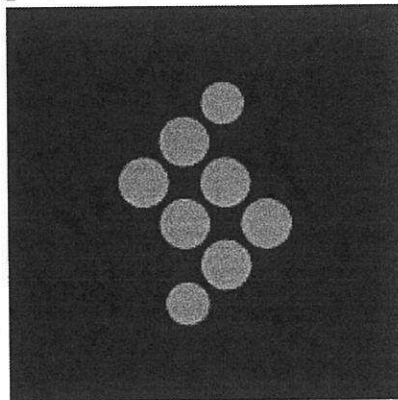
Bank customers will be able to use their mobile phone numbers to make payments by logging on to their mobile banking app and registering their phone number under the PayShap icon.

At launch, the payment limit will be set to ZAR 3,000 (\$163) per transaction in a bid to reduce reliance on cash for both consumers and small businesses.

The first phase of the rollout will see participation from Absa, First National Bank, Standard Bank and Nedbank, with more banks expected to join in the second phase. The SARB intends to extend the service to non-banks "as soon as it is practically possible".

PayShap is an ISO 20022-compliant platform and claims to adhere to "global best practices" for instant payments.

PayShap launches in South Africa



-END OF EXAMINATION PAPER-

[Total for this paper: 100 marks]

[18 Marks]

purpose of the transfer has fallen away	
c) The remedy used to recover money used for payments of transfers made erroneously	3. <i>Conditio ob turpem vel iniustam causam</i>
d) The remedy used when performance was rendered in terms of an illegal agreement	4. <i>Conditio causa data causa non secuta</i>