

LAW OF BANKING AND PAYMENTS 2024



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OVERVIEW

Law of Banking and Payments is an elective course taught in the final year of the LLB programme. The Banking and Payments course covers a wide range of issues and topics of interest and importance not only to those students contemplating careers as banking lawyers, but also to those intending to practise as general corporate or commercial lawyers. The course includes sections on: the law of negotiable instruments, specifically bills of exchange, promissory notes and cheques; the relationship between a bank and its customer within the law of cheques; documentary credits; issues surrounding the Financial Intelligence Centre Act ('FICA'), particularly measures aimed at the detection and prevention of money laundering; an overview of the Prevention of Organised Crime Act ('POCA') and the obligations which that act imposes on professionals and business people; an overview of banking regulation, the role of the Reserve Bank .

Credit Value

The credit value of this course is 9 semester credits

LECTURER

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Please allow the lecturer 24 hours to respond to your email with a confirmation of the appointment date and time. The lecturer's availability may be affected by administrative meetings.

ASSUMPTION OF PRIOR LEARNING

The following assumption of prior learning are expected:

- the ability to read, interpret and extract legal principles from legislation, court decisions and other source materials;
- the ability to learn independently;
- the ability to apply problem-solving techniques to practical situations.

OUTCOMES

Critical Outcomes

The course intends to develop in students the skills set out below which are essential to the study and practice of law:

- problem identification and solving;
- successful completion of given tasks without supervision ; collection, analysis and evaluation of legal information;
- effective communication in both spoken and written word;
- working in groups in dispensing advice to potential clients.

Specific Outcomes

Following the successful completion of this course, the students should be able to:

- demonstrate knowledge of the principles of negotiable instruments in South Africa;
- differentiate between various negotiable instruments and their essential elements;
- demonstrate knowledge of the rights, duties, obligations and liabilities of parties to negotiable instruments;
- demonstrate an understanding of electronic payments and digital currency as a form of payment
- understand the nature of banking law in South Africa, bank-customer-relationship and the liability of the bank
- recognise and describe basic money laundering techniques;
- understand and apply the principal measures aimed at the detection and prevention of money laundering and other activities of organised crime;
- understand the legal obligations of professionals and business people to combat money laundering and organised criminal activities, and be aware of the penalties for failure to comply;
- demonstrate an understanding of the role of the Reserve Bank in regulating the South African financial sector, and the tools available to the bank in undertaking its work.

TEACHING METHODS

Teaching will take the form of formal lectures. Students will be responsible for reading the relevant source material to which they will be referred in lectures and for completing any tasks assigned. Pre-reading ahead of lectures is recommended so as to facilitate better understanding of concepts. For discussions, tests and examinations, practical examples and cases will be used as the basis of learning the principles of law in question.

STUDY MATERIAL

There is no prescribed textbook for this course. Students will be referred in lectures to academic articles, reported cases, statutes, and relevant sections of various textbooks which are available in the Law Library. The two most important textbooks to which reference will be made are:

1. Sharrock, R.; *The Law of Banking and Payment in South Africa*; Juta; 2016
2. Malan, F.R.; *Malan on Bills of Exchange, Cheques and Promissory Notes* (5th ed); LexisNexis;2009

ASSESSMENT STRATEGY

There will be one assignment, counting 15% of the total course mark, and one class test, counting 15% of the total mark each, which together will comprise the class component of the course and account for 30% of the final mark. The examination will account for the remaining 70%. **Students are warned that it will not be possible to pass the examination without having done the additional reading to which they will be referred in lectures.**

Test Date: TBC

Assignment Due Date: TBC

SECTION A

PAYMENTS

1. Traditional /Paper-based Negotiable Instruments
 - (a) Meaning
 - (b) Types of Negotiable instruments
 - (i) Bills of Exchange
 - (ii) Cheques
 - (iii) Promissory Notes
 - (c) Drawers/maker/debtors
 - (i) Introduction
 - (ii) Liability
 - (iii) Elements of liability
 - (d) The Holder
2. Electronic Payments
3. Digital Currency

SECTION B

Banking

1. Nature of Banking Law in South Africa
2. The Roles of the Bank
3. The Bank-Customer-Relationship
4. Bank Liability
5. Bank Regulation and the Finance Sector
6. The South African Reserve Bank
7. The Prevention of Corrupt Activities