INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly.

2. This paper consists of ELEVEN (11) pages. Please ensure that you have all of the pages.

3. Please answer ALL QUESTIONS

4. Please note that the multiple choice questions must be answered in the MCQ sheet provided and not on this question paper

5. Students are entitled to retain the question paper.
SECTION A

Question 1
A negotiable instrument is discharged when:

(A) The drawer undertakes to make payment;
(B) It is presented for payment to the bank, and is honoured;
(C) The payee dies;
(D) None of the above is correct.

Question 2
In a negotiable instrument the drawee:

(A) Is the person entitled to payment on that particular cheque;
(B) Is the person who issued the cheque;
(C) Is the holder of the instrument;
(D) None of the above is correct.

Question 3
The following are the CORRECT non-essential elements of a cheque:

(A) Date, place, signature and description of value;
(B) Date, signature and amount payable;
(C) Date, place and amount payable;
(D) None of the above is correct.
Question 4

In order for a negotiable instrument to be valid it must be signed by:

(A) The drawer;
(B) The drawer, indorser and holder;
(C) The payee;
(D) Both the drawee and the payee.

Question 5

The general rule is that in the event of a discrepancy between the words and the figures in a cheque, the words should take preference, however in Dependable Aluminium Windows and Doors CC v Antoniades 1993 (2) SA 49 (N) it was held that:

(A) Since the words were also illegible the figures had to take preference;
(B) The words must only be given effect if they are hand written;
(C) The drawer of the cheque must be asked to clarify what he intended;
(D) All of the above are correct.

Question 6

A blank indorsement results in:

(A) A bearer instrument;
(B) A blank instrument;
(C) An instrument that cannot be negotiated further;
(D) The instrument being converted into a promissory note.
Question 7
An order cheque is negotiated to an endorsee by:

(A) Delivery;
(B) Endorsement and delivery;
(C) Crossing;
(D) Endorsement and crossing.

Question 8
A bipartite credit card consists of a series of relationships that involve:

(A) The credit card issuer, the credit card holder and supplier;
(B) The credit card holder and credit card user;
(C) The supplier and credit card issuer;
(D) None of the above is correct.

Question 9
The code of commercial banking practice provides that its provisions:

(A) Will be legally binding in the court of law;
(B) May be used to influence the interpretation of the legal relationship between you and your bank;
(C) Will give rise to a trade custom or tacit contract or otherwise between you and your bank;
(D) None of the above is correct.
Question 10

An instrument is payable to bearer if:

(A) It is payable to a fictitious person;
(B) It is expressed to be payable to order;
(C) If it is expressed to be payable to a juristic person;
(D) None of the above is correct.

Question 11

Which statement is a characteristic of a negotiable instrument?

(A) A negotiable instrument is not readily transferable;
(B) A drawer of the instrument is entitled to sue;
(C) Instrument is a source of obligation;
(D) If not signed the instrument, cannot be negotiated.

Question 12

One of the elements of a negotiable instrument is that it should be in writing. This means:

(A) Reproducing words in an invisible form;
(B)Appending a mark which must be taken as a signature;
(C) Handwritten words do not take preference over typed words;
(D) None of the above is correct.
Question 13

Parties to an international sale face the following risk:

(A) Economic risk, the possibility that one party may be unable or unwilling to perform;

(B) Political risks, where proper performance is prevented by cancellation of export or import licenses;

(C) Quality control, the difficulty of effective quality control in abroad countries;

(D) All of the above are correct.

Question 14

In terms of s 17 of the South African Reserve Bank Act 90 of 1989 the following constitutes legal tender:

(A) Two or one rand coins: any amount not exceeding R50;

(B) 50,20,10 cent coins: any amount not exceeding R5;

(C) Coins of five cents or less: any amount not exceeding 50 cents;

(D) All of the above are correct.

Question 15

In order for an endorsement to be valid it must meet the following requirements:

(A) It must be written on the instrument itself;

(B) It must relate to only one part of the instrument;

(C) If it is payable to two or more payees who are not partners only one must indorse it;

(D) None of the above is correct.

TOTAL SECTION A: 30 MARKS
SECTION B

Question 1

1. Discuss the defences that the defendant (the person sued on the instrument) may raise and whether these defences are absolute or relative in the following circumstances:

1.1 Sindy is 15 years and has won the writing competition in her school. The prize she received was a cheque of R1000. The cheque does not have any markings or crossings preventing the transfer of the cheque. She endorses the cheque and delivered it to Lucky as payment for the piano lessons she had with him. The cheque was dishonoured and Sindy is now sued on the instrument.

[Total Q1.1: 3 marks]

1.2 Alex a company manager, signed a blank (bearer) cheque, and gave it to the messenger. The messenger had to fill in the amount once told by the post office how much was owed for their water bill. The messenger was told that R150-00 was outstanding. The messenger paid the required amount by cash. He thereafter filled in the cheque making it payable for the amount of R1500-00, then delivers the cheque to X Ltd in settlement of his personal clothing account. When X Ltd presented the cheque for payment it is dishonoured by the bank. Alex is sued on the instrument.

[Total Q1.2: 3 marks]
1.3 Kenny D is a 94 year old living icon. In celebration of his birthday he is scheduled to be at the city hall to sign autographs for all the Blues and Jazz lovers. Andrew, a fan, asked Kenny D to sign his t-shirt and a couple of papers he had in his hands. It turned out that one of the papers Andrew had was a cheque, which Kenny D had signed. Kenny D is now sued on the instrument.

[Total Q1.3: 3 marks]

1.4 Andy gives Mary a cheque of R100, to pay for the electricity. Mary, desperate for cash, alters the cheque making it payable for the amount of R1000. The cheque was presented for payment and dishonoured by the bank. Andy is sued on the instrument.

[Total Q1.4: 3 marks]

1.5 Lucky completes a cheque for R10000-00, signs it, leaving it on his desk in his office, and goes to make tea in the kitchen. Whilst Lucky is in the kitchen the cleaning lady enters his office and steals the cheque. The cheque was presented for payment and the bank dishonoured it, and Lucky is now sued on the instrument.

[Total Q1.5: 3 marks]

TOTAL Q1: 15 MARKS
The above diagram purports to be a negotiable instrument in the form of a cheque.

2.1 Identify the following parties in the above instrument

2.1.1 Drawer

[Total Q2.1.1: 2 Marks]

2.1.2 Drawee

[Total Q2.1.2: 2 marks]

2.1.3 Payee

[Total Q2.1.3: 2 marks]
2.2 What is the type of instrument above?  

[Total Q2.2: 2 marks]

2.3 What is the amount payable in the above instrument?  

[Total Q2.3: 2 marks]

2.4 Read the following facts in conjunction with the instrument above, and answer the questions which follow.

Michael having received a cheque from Ken Jones and thereafter negotiates it to Lucy as payment for rent at his commune. Lucy thereafter affixes an “endorsement in blank” on the back of the cheque and hands it over to Peter as payment for her telephone bill. Peter signed the cheque at the back and wrote the name of his stationery suppliers (Gs’ Stationery Inc). However Peter left his office unlocked and Sally his assistant stole the cheque and negotiated by delivering the cheque to Andrew’s Petrol Suppliers Pty (Ltd) as payment for petrol. Andrew’s Petrol Suppliers Pty (Ltd) presents the cheque for payment and it is dishonoured.

2.4.1 State and explain who were the holders of the instrument from the time the cheque was issued to the time it was presented for payment?  

[Total Q2.4.1: 3 marks]

2.4.2 Explain what was the type the instrument, when Peter received it from Lucy?  

[Total Q2.4.2: 2 marks]
2.4.3 Explain what was the type of the instrument, when Andrew’s Petrol suppliers Pty Ltd received it from Sally?

[Total Q2.4.3: 2 marks]

2.4.4 Explain who can be sued on the instrument, if the instrument is presented for payment and is dishonoured by the bank?

[Total Q2.4.4: 8 marks]

TOTAL Q2: 25 MARKS

TOTAL FOR PAPER: 70 MARKS